TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. 504

UNITED STATES OF AMERICA, PLAINTIFF

vs.

UNITED STEELWORKERS OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No.

UNITED STATES OF AMERICA, PLAINTIFF

vs.

UNITED STEELWORKERS OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

INDEX

Record from the United States District Court for the Western District of Pennsylvania 1

Petition

Exhibit "A" Direction to the Attorney General 8

Exhibit "B"—Executive Order No. 10843, with accompanying statement by the President of the United States 9

Exhibit "C"—Report to the President submitted by the Board of Inquiry 11

Stipulation 31

Answer of Defendant United Steelworkers of America with annexed affidavits 35

Affidavit of David J. McDonald 39

Affidavit of I. W. Abel 67

Affidavit of Robert R. Nathan 69

Affidavit of Leon Keyserling 94

Affidavit of Meyer Bernstein 98

Affidavit of Otis Brubaker (October 19) 117

Affidavit of Otis Brubaker (October 20) 123
Transcript of Proceedings, October 20, 1959 125
Plaintiff's Exhibits:
Affidavit of Frederick H. Mueller 161
Affidavit of Thomas S. Gates, Jr. 168
Affidavit of James P. Mitchell 172
Affidavit of Hugh L. Dryden 174
Affidavit of A. R. Luedecke 178
Affidavit of Wendell B. Barnes 180
Affidavit of Howard G. Freas 185
Affidavit of Clarence G. Morse 189
Affidavit of Raymond J. Saulnier 193
Findings of Fact and Conclusions of Law Proposed by Plaintiff 201
Injunction Proposed by Plaintiff 206
Comments of Employer Defendants on Form of Injunction Presented by Plaintiff 208
Letter of Counsel for the Defendant Union, with attached: 211
Proposed Findings of Fact and Conclusions of Law 212
Proposed Order 216
Objections to Plaintiff's Proposed Findings and Conclusions 217
Objections to Plaintiff's Proposed Injunction 218
Transcript of Proceedings, October 21, 1959 220
Findings of Fact and Conclusions of Law 244
Injunction 249
Notice of Appeal 251
Designation of Record on Appeal 251
Motion for Stay Pending Appeal 251
Order Denying Stay Pending Appeal 253
Order Upon Motion — Hour Stay 253
Proceedings in the United States Court of Appeals for the Third Circuit
Application for Stay Pending Appeal 254
Transcript of Proceedings Before Staley, Circuit Judge, on Application for Stay 258
Order per Staley, Circuit Judge 266
Application for Further Stay Pending Appeal 267
Application for Advancement of Consideration of Appeal 278
Transcript of Proceeding with Reference to Further Stay 280
Order Granting Stay 282

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	Civil No. 1821
UNITED STEELWORKERS OF AMERICA,	)	
Acme Steel Company,	)	
Acme-Newport Steel Company,	)	
Allegheny-Ludlum Steel Corporation,	)	
Wallingford Steel Co.,	)	
Armco Steel Corporation,	)	
Armco Drainage and Metal Products, Inc.,	)	
National Supply Company	)	
Southwest Steel Products,	)	
The Babcock & Wilcox Co.,	)	
Bethlehem Steel Company,	)	
Bethlehem Cornwall Corporation,	)	
The Dundalk Company,	)	
Buffalo Tank Corporation,	)	
Bethlehem Limestone Company,	)	
Bethlehem Transportation Corporation,	)	
Colorado Fuel and Iron Company,	)	
Crucible Steel Company of America,	)	
Donner-Hanna Coke Corporation,	)	
Great Lakes Steel Corporation,	)	
The Hanna Furnace Corporation,	)	
Stran-Steel Corporation,	)	
National Steel Products Corporation,	)	
Inland Steel Company,	)	
Interlake Iron Corporation,	)	
Jones & Laughlin Steel Corporation,	)	
Union Dock Company,	)	
Kaiser Steel Corporation,	)	
Lukens Steel,	)	
McLouth Steel Corporation,	)	
Moltrup Steel Products Co.,	)	
Northwestern Steel & Wire Co.,	)	
Pittsburgh Steel Company,	)	
Pittsburgh Tube Co.,	)	
H. K. Porter Co., Inc.,	)	
Republic Steel Corporation,	)	
Air Vue Products Co.,	)	
John A. Roebling's Sons Corporation,	)	
Sharon Steel Corporation,	)	

Shenango Furnace Company,
Superior Drawn Steel Company,
United States Steel Corporation,
Columbia Iron Mining Company,
Wheeling Steel Corporation,
The Youngstown Sheet and Tube Company,
Judson Steel Corporation,
H. H. Robertson Company,
Joseph T. Ryerson and Son, Inc.,
Valley Mould and Iron Corporation,
Wyckoff Steel Company,
Ashtabula and Buffalo Dock Company,
Boland and Cornelius,
Brown and Company,
International Harvester Company,
Cleveland Cliffs Iron Company,
Mesabi Cliffs Mining Company,
Humboldt Mining Company,
Negaunee Mine Company,
Marquette Iron Mining Company,
Coons Pacific Company,
Lerch Brothers, Inc.,
M. A. Hanna Company,
Hanna Iron Ore Division of
National Steel Corporation,
Hanna Ore Mining Company,
Hanna Mining Company,
Morton Ore Company,
Butler Brothers,
Douglas Mining Company,
Ozark Ore Company,
Montreal Mining Company,
W. S. Moore Company,
North Range Mining Company,
Pickands, Mather and Company,
The Balkan Mining Company,
Bennett Mining Company,
Crete Mining Company,
Cuyuna Ore Company,
Erie Mining Company,
Hoyt Mining Company,
Lake Mining Company,
Mahoning Ore & Steel Company,
Odanah Iron Company,
Puritan Mining Company,

The Verona Mining Company,
The Youngstown Mines Corporation,
Western Mining Company,
The Sunday Lake Iron Company,
The Mauthe Mining Company,
Pioneer Mining Company,
Pittsburgh Pacific Company,
Reserve Mining Company,
St. James Mining Company,
Skubic Brothers Company,
Susquehanna Ore Company,
Zenith Mining Company,
Snyder Mining Company,
Oglebay Norton Company,
Defendants.

PETITION FOR INJUNCTIVE RELIEF

The United States of America, by the Attorney General of the United States, petitions for injunctive relief, alleging:

1. This Court has jurisdiction of the subject matter of this proceeding under section 208 of the Labor-Management Relations Act, 1947 (29 U.S.C. 178), (hereinafter sometimes referred to as the Act).

2. This proceeding is instituted on behalf of the United States of America by the Attorney General at the direction of the President of the United States. A copy of the communication directing such action, designated "Exhibit A," is attached hereto and made a part hereof.

3. Defendant, United Steelworkers of America (hereinafter sometimes referred to as the Union) is an unincorporated labor union, representing, among others, employees in the steel industry, which is engaged in trade, commerce and transportation among the several States and with foreign nations and in the production of goods for commerce as defined by the Act. The Union is doing business, and is represented by duly authorized officers and agents, in this District. The Union is the authorized bargaining agent or representative of the employees of the other defendants with respect to rates of pay, wages, hours of work, and terms and conditions of employment.

4. Defendants, other than the Union (hereinafter collectively called Employers or Employer Defendants), are engaged, respectively, in one or more of the various stages of steel production, including the mining and transport of iron ore by railroad or

vessels, the operation of blast furnaces for the conversion of iron ore into pig iron, the production of steel ingots, the rolling and shaping of steel ingots into various shapes and forms of steel products, and the fabricating of certain finished products.

5. Collective bargaining agreements between the Union on behalf of the employees of the Employers and the respective Employers expired by their terms on June 30, 1959. Unresolved labor disputes between the Employers and their employees represented by the Union as to the terms and conditions of new agreements, resulted in a strike of such employees commencing on July 15, 1959 and continuing to the present time.

6. On October 9, 1959, the President of the United States issued Executive Order 10843 creating a Board of Inquiry to inquire into the issues involved in the labor disputes between the Union and the Employers and to make a written report to him. The President made in the Executive Order a finding that the strike was affecting a substantial part of an industry engaged in trade, commerce, and transportation among the several States and with foreign nations and in the production of goods for commerce and, that, if permitted to continue, the strike will imperil the national health and safety. On October 14, 1959, the President issued Executive Order 10848 extending the date on which the Board of Inquiry was to report to him. A copy of Executive Order 10843, with an accompanying statement of the President, and of Executive Order 10848, designated "Exhibit B," are attached hereto and made a part hereof.

7. The Board of Inquiry so convened by the President inquired into the issues involved in the labor disputes and made its written report to the President on October 19, 1959. A copy of the report, designated "Exhibit C," is attached hereto and made a part hereof. Upon its receipt, the President filed the report with the Federal Mediation and Conciliation Service, made its contents available to the public and directed the institution of this proceeding.

8. The production of steel constitutes one of the largest single industries in the United States and the value of its products is greater than the value of all other metal products combined, the net billings of the steel companies exceeding 12 billion dollars in 1958. In contemporary terms, steel production is viewed as a basic measure of the economic strength of a country. Industry and business are so dependent upon steel that steel may be deemed the backbone of the whole national economy of this country.

The strike, which has continued for more than three months, is upon a national basis, having resulted in the shutdown of 310 steel plants, 118 iron ore mines and 11 transport facilities located

in 32 States and extending from the Eastern Seaboard to the West Coast. The strike has deprived the nation of approximately 87% of its steel production since July 15, 1959, and inventories of finished steel products are estimated as declining at the high rate of approximately 5,000,000 tons a month. Inventories have dropped from the abnormally high figure of 24,800,000 tons on July 15, 1959, to the dangerously low figure now of only about 10,000,000 tons. Steel stocks are now below the level required to sustain the continued production of numerous industries and businesses dependent upon steel products. Since inventories include a multitude of shapes, sizes and specifications necessary for the continued maintenance of manufacturing operations and of production schedules of industrial plants and businesses, at the high current rate of inventory depletion, production schedules of numerous industrial plants and businesses dependent upon finished steel products will be progressively disrupted.

The Intercontinental Ballistic Missile Weapons Programs for the Atlas and Titan Missiles, including the construction of the operational bases for them, and the Fleet Ballistic Missile Polaris System, including the submarine support therefor, constitute an indispensable part of the defense effort of the United States. Project Mercury, the manned satellite program of the National Aeronautics and Space Administration, as well as its program for the development of powerful rocket engines for ballistic missiles are of national significance. These programs of the highest national priority require special and unique types and shapes of steel, which are not obtainable from the comparatively few mills still in operation or from imports and are not inventoried. The current strike in the steel industry has now resulted in acute shortages of special steel for pressure vessels, of structural steel required in the construction of the Intercontinental Ballistic Missile operational launching sites for Atlas and Titan, as well as certain elements of the Polaris Weapon System. The lack of special steel items has adversely affected the programs described above of the National Aeronautics and Space Administration. Production schedules for these defense and space programs of the highest national priority are now affected and continuation of the strike will seriously set back these, as well as other priority programs requiring the use of steel products.

Of approximately 765,000 workers idled by the steel strike on October 14, 1959, over 500,000 are striking members of the Union and about 265,000 have been employed in other industries which supply services, including the transport of materials to and from the steel industry, or which are dependent upon steel products. Continuance of the strike will result in rapidly increasing lay-offs

in industries and businesses dependent upon supplies of steel, including small businesses which are particularly vulnerable.

About 150,000 workers, laid off by the railroads, coal mines and other industries have applied for unemployment compensation, hardship and distress among these unemployed workers and their families is mounting and will increase upon an accelerated basis during a continuance of the work stoppage. The continued unemployment of 765,000 employees, who support families numbering over 2,000,000 persons, will have the inevitable consequence of adversely affecting their subsistence and health.

9. The current strike affects a substantial part of the steel industry, an industry engaged in trade, commerce and transportation among the several States and with foreign nations and engaged in the production of goods for commerce, and, if permitted to continue, will imperil the national health and safety.

10. Unless the strike is enjoined, the United States of America will suffer immediate and irreparable injury. No previous application has been made by or on behalf of the United States for the relief sought herein.

WHEREFORE, the United States of America prays:

1. That the Court enter its order enjoining the Defendants, and each of them, and their officers, agents, servants and employees, and all persons in active concert or participation with them, (a) from in any manner continuing, encouraging, ordering, aiding, engaging or taking part in a strike or lockout in any of the operations of the employer defendants pertaining to the production of iron and the manufacture, rolling, drawing, forging and fabricating of steel and steel products, including the mining and transport of iron ore and other component materials necessary for the production of iron and steel, or (b) from in any manner interfering with or affecting the orderly continuance of work therein.

2. That the Court enter its order enjoining the members of the United Steelworkers of America, acting in concert, from in any manner continuing, encouraging, ordering, aiding, engaging or taking any part in a strike or lockout at the facilities or operations of the Employers described in the preceding paragraph hereof, or from in any manner interfering with or affecting the orderly continuance of work at such places, and from taking any action which would interfere with this Court's jurisdiction in the premises; provided, however, that nothing in this paragraph shall be construed to require an individual employee to render labor or service without his consent or to make the quitting of his labor or service by an individual employee an illegal act.

3. That the Court enter its order directing the United Steelworkers of America, its president and other appropriate officers, agents, and employees (a) to instruct, immediately, all its members who are employees of the employer defendants herein and engaged in any of the operations described above to resume their normal employment forthwith, and (b) to take all appropriate action which may be necessary to insure that such directions are carried out.

4. That the Court direct that, during the period of the Injunction, unless and until new agreements are executed between the employer defendants and the United Steelworkers of America, employees of the employer defendants engaged in any of the operations described above and represented by the United Steelworkers of America shall be employed under the terms and conditions of all agreements in effect between the United Steelworkers of America and each of the respective employer defendants herein on June 30, 1959.

5. That this Court direct that, during the period of the injunction the several defendants engage in free collective bargaining in good faith for the purpose of resolving their labor disputes and make every effort to adjust and settle their differences.

6. That, pending the issuance of said injunction, the Court issue forthwith a temporary restraining order, restraining and enjoining the defendants, their respective officers, members, agents, servants and employees, and all persons in active concert or participation with them, in the manner and form aforesaid.

7. That the Court grant plaintiff such other and further relief as may be just and proper.

William P. Rogers
Attorney General of the United States

George Cochran Doub
Assistant Attorney General

Hubert I. Teitelbaum
United States Attorney

Donald B. MacGuineas
Attorney, Department of Justice

Harland F. Leathers
Attorney, Department of Justice

VERIFICATION

CITY OF WASHINGTON
DISTRICT OF COLUMBIA } ss

GEORGE COCHRAN DOUB, Assistant Attorney General, United States of America, being first duly sworn, says that he has read the foregoing petition of the United States of America and knows the contents thereof and that the same is true of his own knowledge except as to the matters which are therein stated to be on information and belief and as to those matters he believes them to be true.

George Cochran Doub

Subscribed and sworn to before me this —— day of October, 1959.

Notary Public in and for the
District of Columbia

My commission expires:

EXHIBIT A TO PETITION

October 19, 1959

Dear Mr. Attorney General:

On October 9, 1959, by virtue of the authority vested in me by Section 206 of the Labor-Management Relations Act, 1947, I issued Executive Order No. 10843, creating a Board of Inquiry to inquire into the issues involved in a labor dispute between certain corporations or organizations in the United States producing or fabricating steel or the components thereof and certain of their employees represented by the United Steel Workers of America. On October 14, 1959, Executive Order No. 10843 was amended by Executive Order No. 10848 so as to extend the time in which the Board was required to report to me.

This morning, October 19, 1959, I received the Board's written report in the matter. A copy of that report is attached.

In my opinion this unresolved labor dispute has resulted in a strike affecting a substantial part of an industry engaged in trade, commerce, and transportation among the several States and with foreign nations, and in the production of goods for commerce, which strike will, if permitted to continue, imperil the national health and safety.

Therefore, in order to remove a peril to the national health and safety and to secure a resumption of trade, commerce, and transportation among the several States and with foreign nations and the production of goods for commerce, I direct you, pursuant to the provisions of Section 208 of the Labor-Management Relations Act, 1947, to petition in the name of the United States any District Court of the United States having jurisdiction of the parties to enjoin the continuance of such strike and for such other relief as may in your judgment be necessary or appropriate.

Sincerely,
DWIGHT D. EISENHOWER

The Honorable William P. Rogers
The Attorney General
Washington 25, D. C.

EXHIBIT B TO PETITION

THE WHITE HOUSE
EXECUTIVE ORDER
No. 10843

CREATING A BOARD OF INQUIRY TO REPORT ON A LABOR DISPUTE AFFECTING THE STEEL INDUSTRY OF THE UNITED STATES

WHEREAS there exists a labor dispute between certain corporations or organizations in the United States producing or fabricating steel or the components thereof and certain of their employees represented by the United Steel Workers of America, AFL-CIO; and

WHEREAS such dispute has resulted in a strike which, in my opinion, affects a substantial part of the steel industry, an industry engaged in trade, commerce, and transportation among the several States, and with foreign nations, and in the production of goods for commerce, and which strike, will, if permitted to continue, imperil the national health and safety;

NOW, THEREFORE, by virtue of the authority vested in me by section 206 of the Labor-Management Relations Act, 1947, 61 Stat. 155 (29 U.S.C. 176), I hereby create a Board of Inquiry, consisting of

George W. Taylor of Pennsylvania, Chairman, John Perkins of Delaware and Paul N. Lehoczky of Ohio as members to inquire into the issues involved in such dispute.

The Board shall have powers and duties as set forth in Title II of such Act. The Board shall report to the President in accordance with the provisions of section 206 of such Act on or before October 16, 1959.

Upon submission of its report, the Board shall continue in existence to perform such other functions as may be required under such Act, until the Board is terminated by the President.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
October 9, 1959

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

After carefully studying the circumstances surrounding the thirteen week old steel strike, I have concluded that, if permitted to continue, this strike would imperil the national health and safety. The national interest demands an immediate resumption of production in this vital industry.

To bring about a resumption of production, I am invoking the statutory means which Congress has provided for that purpose. I have today issued an Executive Order appointing a Board of Inquiry to examine immediately into the issues of this dispute and to submit to me the report prescribed by law.

The strike has closed 85 percent of the nation's steel mills, shutting off practically all new supplies of steel. Over 500,000 steel workers and about 200,000 workers in related industries, together with their families, have been deprived of their usual means of support. Present steel supplies are low and the resumption of full scale production will require some weeks. If production is not quickly resumed, severe effects upon the economy will endanger the economic health of the nation.

I profoundly regret that the parties to the dispute have failed to resolve their differences through the preferred methods of free collective bargaining, even though every appropriate Government service was available to them in support of their efforts. I have been advised by both parties that negotiations between them have broken down and that they see no hope for an early voluntary settlement.

Nevertheless, I want to emphasize that the action I have taken in no way relieves the parties of their grave obligation to the American people to resume negotiations and reach a just and responsible settlement at the earliest possible time.

THE WHITE HOUSE

EXECUTIVE ORDER 10848

AMENDMENT OF EXECUTIVE ORDER NO. 10843, CREATING A BOARD OF INQUIRY TO REPORT ON A LABOR DISPUTE AFFECTING THE STEEL INDUSTRY OF THE UNITED STATES

By virtue of the authority vested in me by section 206 of the Labor-Management Relations Act, 1947, 61 Stat. 155 (29 U.S.C. 176), I hereby amend the second sentence in the penultimate paragraph of Executive Order No. 10843 of October 9, 1959, entitled "Creating a Board of Inquiry To Report on a Labor Dispute Affecting the Steel Industry of the United States," to read as follows:

"The Board shall report to the President in accordance with the provisions of section 206 of such Act on or before October 19, 1959."

DWIGHT D. EISENHOWER

The White House,
October 9, 1959

EXHIBIT C TO PETITION

REPORT TO THE PRESIDENT THE 1959 LABOR DISPUTE IN THE STEEL INDUSTRY

Submitted by the Board of Inquiry
under
Executive Orders 10843 and 10848
October 19, 1959
(Letter of Transmittal)

Washington, D. C.
October 19, 1959

The President
The White House

Dear Mr. President:

On October 9, 1959, under Executive Order 10843, you appointed this Board of Inquiry to report to you on the current labor dispute in the steel industry.

Our report is transmitted herewith. The scope and character of the inquiry which has resulted in the findings of the Board are described in the report.

At our request, the time for submitting this report was extended by Executive Order 10848 until today.

We desire to acknowledge the able technical assistance rendered to the Board by the Federal Mediation and Conciliation Service and by the Department of Labor.

This report represents the unanimous views of all members of the Board.

Respectfully submitted,
John A. Perkins
Paul N. Lehoczky
George W. Taylor, Chairman

REPORT TO THE PRESIDENT

I. *Establishment of the Board.*

On October 9, 1959, the President, by Executive Order 10843, created this Board of Inquiry to report on the issues in the current steel strike. He directed the Board to report on or before October 16, 1959, and later, by Executive Order 10848, extended the date for submission to October 19, 1959.

The Board met on October 11 and conducted public hearings in Washington, D. C., on October 12, 13, 14, and 15. A further public hearing was held on October 18.

The companies in the dispute with the United Steelworkers of America are producers of iron and steel products, certain shipping and dock companies operated both by basic steel companies and by independent operators, and certain mining companies.

II. *Background of the Dispute*

Representatives of twelve steel companies[1] undertook the key negotiations with the United Steelworkers of America. They proposed on April 10, 1959, that the contract due to expire on June 30 be extended for an additional year, with deletion of the provision for future automatic cost-of-living adjustments. After rejecting this offer, the union presented a long list of proposals from which might be drawn a "package" of agreed-upon size, with the character and degree of the changes to be resolved through negotiation. Sessions between the parties occurred between May 11 and the last week of June. No progress was made toward reconciling the positions of the parties, and a strike on July 1 seemed imminent. The President of the United States then requested that the parties continue to bargain without interruption of production until a settlement was achieved. Thereupon, the expiring contract was extended through July 14. The strike began on July 15.

The Secretary of Labor made a study of the facts with respect to the dispute. He reported to the President and subsequently

[1] Allegheny Lundum Steel Corporation, Armco Steel Corporation, Bethlehem Steel Company, The Colorado Fuel and Iron Corporation, Great Lakes Steel Corporation, Inland Steel Company, Jones & Laughlin Steel Corporation, Kaiser Steel Corporation, Republic Steel Corporation, United States Steel Corporation, Wheeling Steel Corporation, The Youngstown Sheet and Tube Company.

published statistical studies relating to the steel strike. The Federal Mediation and Conciliation Service attempted mediation throughout this period.

Subsequent failure of negotiations resulted in President Eisenhower inviting the president of the union and chief executives of five companies to meet separately with him on September 30. He urged them to undertake effective collective bargaining and promptly to settle the strike. Negotiations were resumed on October 1.[1] On October 5 negotiations ceased.

This Board of Inquiry was then created on October 9 pursuant to the "National Emergencies" sections of the Labor Management Relations Act, 1947.

III. *Functions of the Board*

At the outset, the Board emphasized that the President had concluded that the labor dispute between certain corporations producing or fabricating steel, or the components thereof, and certain of their employees represented by the United Steelworkers of America, would, if permitted to continue, imperil the national health and safety. The Board, under the circumstances of this dispute, decided that it could best discharge its responsibilities under the Labor Management Relations Act, 1947, by reporting to the President the facts with respect to the dispute, including specifically a statement of the basic issues that must be resolved and the positions of the parties respecting them.

The Board had two subsidiary activities. It received into the record evidence submitted by the parties with respect to the public emergency aspect of the dispute. As well as holding hearings, the Board sought to mediate the dispute through discussions with the parties.

Attempts were made by the Board to recast the so-called road-block issues so that effective negotiations could be resumed. The parties held bargaining sessions on October 16 and 17.

At the public hearings the parties introduced exhibits and offered testimony on the question whether continuation of the steel strike "will imperil the national health or safety" under Sections 206 and 208 of the Labor Management Relations Act, 1947. The testimony and exhibits are a part of the record of the Board.

IV. *The Issues and Positions of the Parties*

There are many issues in this dispute. It is evident, however, that the major roadblocks to settlement are in the general areas of "economics" and "work rules." This report concentrates on

[1] See Union Exs. C, D, E and F, and Joint Ex. 1; Economics Exs. A and B.

these issues. Their resolution would lead to the settlement of the strike.

History of the Economic Issues

Wages and so-called fringe benefits are dealt with under the heading economic issues as the parties dealt with them in their presentations to the Board. Different interpretations were advanced as to the economic position of the industry and the needs of the country. The parties differed, as well, on the statistics which measure the industry's economic situation and the status of the industry's wage earners. Their policy differences were especially pronounced respecting the role of increased wage payments in price rises and economic growth.

This dispute has occurred during a period of growing national interest in ways of achieving both price stability and economic growth. This public interest has put unusual strain on collective bargaining, the values of which our Nation also seeks to preserve. Even more than in previous years, it has been widely felt that the settlement in steel will affect wages and prices throughout the economy.

The companies have taken the position that they cannot contemplate any wage increase which could not be met out of improvements in their operations. The companies' chief spokesman testified that[3] "new wage and benefit increases for the employees can be provided only as made available through more effective operation of the business. This principle is basic." Any other course, he argued, would lead to price increases of steel, to wage and hence price increases in other industries, and to a general raising of the price level. For steel, it is maintained, price rises would mean acceleration of already present competition from substitute commodities and from imports, with adverse effects on employment.

On October 14 the companies stated to the Board that their ability to pay wage and other payment increases is 2 percent a year.[4] This figure, based on one way of measuring changes in output per man-hour, was stated to be a significant limiting factor on their position. The technical questions involved in the choice of such a measure (whether, for example, a measure apparently based on steel shipments unadjusted for changes in types of steel shipped is appropriate) are of some significance. Other measures of output per man-hour, higher than 2 percent, for steel, for manufacturing, and for the whole economy are also referred to in the

[3] Transcript, pp. 364-365.

[4] Transcript, pp. 386, 388. See Appendix A for details of the companies' proposals and for a summary of the evidence relating to the cost of this proposal.

companies' submissions. The companies made only limited explanation of the basis for the selection of the 2 percent figure.

No estimate has been submitted by the companies of the additional economies which might arise as a result of the contract changes which the companies desire, particularly those pertaining to work rules. Should there be any resultant savings, however, the companies stated that they felt some obligation, in making distribution, to consider other interests rather than the interests of their employees alone.[7]

The significance of the output per man hour, or productivity figures, to the economic argument which underlies this dispute is illustrated by the reliance of the union upon a much higher figure than the companies' 2 percent in justifying its demand for a package increase which it estimated at 15 cents an hour for each year. The union relied essentially upon output per man hour figures for wage employees in steel and for all employees in the private economy as a whole, for the postwar period, up to 3.8 percent.[8] The union has made only limited explanation of its use of productivity figures in arriving at its wage demands.

The union, in support of its case, and of its position that a non-inflationary increase can in fact be greater than 2 percent, cited both the higher rate of productivity advance and profit levels which it believes will permit the payment of a larger wage increase.[9] It denied the "wage push" theory of inflation which was espoused by the companies; its economic consultant argued, on the contrary, that more wages and consumption are necessary to the maintenance of growth and full employment.[10] It also denied that imports offer substantial enough competition to affect the companies' ability to increase wages and fringes by 15 cents an hour.[11]

These considerations are the heart of the economic argument between the parties. Each side has offered counter-argument to the other's position and has restated and refined its position, often buttressing its view with detail and statistical data.

Negotiation on the economic issue, as disclosed in the evidence submitted to this Board, was impeded throughout the dispute by preconditions set by the parties. The companies refused to bargain about wages and fringes until their demands respecting work rules had first been resolved. The union was not willing to discuss work rules' provisions, which it held not to be negotiable

[7] Companies' Ex. B-9, pp. 20-21.
[8] Tr., pp. 104-105.
[9] Tr., p. 158.
[10] See Appendix A for details of the union's proposal and for a summary of the evidence relating to the cost of this proposal.
[11] Tr., p. 166ff.
[12] Tr., p. 269ff.
[13] Tr., p. 288ff.

Since neither side would accept the preconditions of the other, effective negotiations could not proceed.

The positions of the parties became somewhat clearer after the President intervened on September 30 and requested the parties to resume negotiations. In the following three days the companies put into more specific terms the economic package which they were prepared to offer, the apportionment of a 2 percent cost increase, in return for changes in work condition provisions. For all practical purposes, the same basic situation respecting preconditions obtained.

In its appearance before the Board, the union, in addition to stating its interpretation of the companies' offer and the reason for its rejection, outlined a series of economic demands which represented a specific selection from the list of items which had been generally discussed with the companies since the period prior to the strike.

The October 1 offer of the companies to the union, repeated in its appearance before the Board, and the October 12 statement of the union to the Board, reflected the positions of the parties at the conclusion of the Board's hearings on October 15. These positions are described in detail in Appendix A.

At the conclusion of the first three days of hearings, each side indicated willingness to negotiate further and in fact such negotiations did take place following the closing of the Board's hearings on October 15. This resulted in new offers which somewhat narrowed the earlier differences between the parties.

The new offers and positions of the parties are discussed in Section 4 of the report. These constitute the present issues and positions of the parties with respect to them. The offers themselves constitute Appendices B and C.

2. Historical Contract Issues

On June 10, 1959, the twelve major companies submitted an eight point program of contract changes to the union. The companies stated that agreement by the union on language changes relating to this eight point program was a prerequisite to agreement by them to a package composed of a "modest" wage increase and certain fringe benefit improvements. The companies' eight point program of contract changes dealt with the following: (1) local working conditions, (2) wildcat strikes, (3) incentives, (4)

This impasse resulting from the preconditions was apparent even when, in September, bargaining committees from each of the twelve companies met separately to review the work rules problems company by company.

Contract proposals were handed to the union on October 1 and were restated and clarified on October 12.

12 Companies, Ex. B.

work schedules, (5) vacations, (6) overlapping and duplication of benefits, (7) seniority, and (8) simplification and clarification of contract language. No agreement was reached on any of these proposals either before or since the strike began.[1]

In the October 1 proposal for settlement of the strike, the companies offered to withdraw all proposed contract changes with the exception of those relating to three issues, subject to the union's withdrawal of its list of proposed contract changes[2] and to the 2 percent employment cost limitation on wages and fringes.[3] This was the first time that the companies made explicit the limitation on the increase in employment costs which they construed as a precondition for settlement of the dispute. Of the eight contract issues previously mentioned, the companies insisted that agreement was necessary on the issues related to local working conditions, scheduling of work, and wildcat strikes, prior to bargaining on the allocation of the 2 percent employment costs.[4] This proposal was rejected by the union.[5]

Until the hearing before the Board, there was no understanding by the parties as to which of the eight-point objectives the companies were still seeking. At the hearing before the Board, the companies clarified the question as to which of the eight issues still remained to be resolved. In addition to those specified in the October 1 proposal, there was included under the issue relating to work schedules the question of vacation schedules which appears to the Board had previously been covered by point five of the companies' eight point program. It was also made clear that the issue relating to seniority had not been withdrawn as to Great Lakes Steel and the Detroit plant of Jones and Laughlin.[6]

(a) *Local Working Conditions*

The contract issue that has been the most serious bar to a settlement of the strike concerns provisions dealing with "local working conditions." The controversy regarding this problem has centered around Section 2B of the contract between the U.S. Steel Company and the union. Company representatives asserted that with the exception of Wheeling Steel every one of the twelve companies had a similar clause presenting similar difficulties.[7] The spokesman for fifteen additional steel companies, however, stated that six of the fifteen did not have a "local working conditions" clause in their contracts.[8] It was testified that the clauses deal-

[1] Union Ex. B-1, p. 506.
[2] See p. 2. These proposals will be discussed below.
[3] pp. 86, 90; Union Ex. B-1.
[4] 12 Companies Ex. A, p. 19.
[5] 12 Companies Ex. I.
[6] 12 Companies Ex. F.
[7] p. 516.

ing with this question in the shipping affiliates of the steel companies were satisfactory.[22]

Section 2-B, which is reproduced below, was incorporated in the U. S. Steel agreement for the first time in 1947. The clause resulted from the apparent impossibility of incorporating in a national agreement the multitude of local rules and practices that had been established at individual plants. These practices dealt with such matters as crew size for specific operations, relief time, spell arrangements, and other working conditions vital to the cost of operations and to harmonious labor-management relations.

Section 2-B of the expired U. S. Steel agreement reads:

Local Working Conditions

The term "local working conditions" as used herein means specific practices or customs which reflect detailed application of the subject matter within the scope of wages, hours of work, or other conditions of employment and includes local agreements, written or oral, on such matters. It is recognized that it is impracticable to set forth, in this Agreement all of these working conditions, which are of a local nature only, or to state specifically in this Agreement which of these matters should be changed or eliminated. The following provisions provide general principles and procedures which explain the status of these matters and furnish necessary guideposts for the parties hereto and the Board.

1. It is recognized that an employee does not have the right to have a local working condition established, in any given situation or plant where such condition has not existed, during the term of this Agreement or to have an existing local working condition changed or eliminated, except to the extent necessary to require the application of a specific provision of this Agreement.

2. In no case shall local working conditions be effective to deprive any employee of rights under this Agreement. Should any employee believe that a local working condition is depriving him of the benefits of this Agreement, he shall have recourse to the grievance procedure and arbitration, if necessary, to require that the local working condition be changed or eliminated to provide the benefits established by this Agreement.

3. Should there be any local working conditions in effect which provide benefits that are in excess of or in addition to the benefits established by this Agreement, they shall

[22] 11 LA p. 526.

remain in effect for the term of this Agreement, except as they are changed or eliminated by mutual agreement or in accordance with Paragraph 4 below.

4. The Company shall have the right to change or eliminate any local working condition if, as the result of action taken by Management under Section 3—Management, the basis for the existence of the local working condition is changed or eliminated, thereby making it unnecessary to continue such local working condition; provided, however, that when such a change or elimination is made by the Company any affected employee shall have recourse to the grievance procedure and arbitration, if necessary, to have the Company justify its action.

5. No local working condition shall hereafter be established or agreed to which changes or modifies any of the provisions of this Agreement. In the event such a local working condition is established or agreed to, it shall not be enforceable to the extent that it is inconsistent with or goes beyond the provisions of this Agreement, except as it is approved by an International Officer of the Union and the Industrial Relations Executive of the Company.

There has been much controversy over the meaning of Section 2-B between the parties directly and in arbitration proceedings. In 1952 one of the basic issues referred by the parties to the Wage Stabilization Board was a proposal of the companies to revise or eliminate Section 2-B and its counterparts, and a proposal of the union to extend the clause throughout the industry. The Wage Stabilization Board concluded, after study and hearing, that there be no change in existing contractual provisions.[23] Thus, the current language of Section 2-B in the U. S. Steel agreement is identical to that agreed to in 1947.

Throughout the 1959 negotiations the companies have contended that U. S. Steel's Section 2-B and its counterpart in other agreements have seriously hindered efforts to improve plant efficiency.[24] Although the parties are in full agreement that Section 2-B does not prevent or interfere with adjustments when "the basis for the existence of the local working condition is changed or eliminated," such as the introduction of technological changes, changes in equipment or manufacturing processes,[25] the companies argue that Section 2-B is a serious hindrance in other circumstances, for example, where there has been no investment in new

[23] Union Ex. B-14.
[24] Tr., pp. 366, 139, 445.
[25] Tr., pp. 79, 155; Union Exs. B-7, B-8.

facilities.[1] The union, on the other hand, insisted that "the existing language rebuts the notion that featherbedding has been protected or that management has been obstructed in improving productivity or efficiency." The union contended that Section 2-B does prevent the unilateral imposition of an increase in the individual's workload.[2]

There has been a fundamental disagreement about this problem. The companies insisted upon a revision of Section 2-B as an essential prerequisite to the revision or abolition of outmoded work rules. The companies declared that the efficient operation of their plants made a contract change imperative.[3] The companies have stated that the precise language to accomplish this objective is negotiable.[4] The union insisted that "local working conditions" can only be settled at the plant level and that there is nothing in the current language of Section 2-B which hinders the solution of the companies' problems.[5] In an attempt to meet these objections, the union proposed the insertion in the U. S. Steel and other agreements of a sentence from the Bethlehem agreement which reads, "The provisions of this section are not intended to prevent the management from continuing to make progress." The union also offered the establishment of a joint committee to survey the "local working conditions" problem and to make recommendations for its solution.[6] These suggestions were not accepted by the companies.

This issue is so difficult because it may involve changes in crew size and the consequent likelihood that men would be displaced. Both parties have remained adamant.[7]

The companies declared they could not improve wage and fringe benefits in the industry without an opportunity, through a revision of Section 2-B, as well as general technological improvements, to absorb increased costs by improved efficiency.[8] The union strongly asserted that management's purpose in proposing contract changes in Section 2-B was to give it a unilateral right to eliminate long established employee benefits gained through prior bargaining and custom, and to increase the workload without any effective protection of the employees' interest.

[1] 12 Companies Ex. B 10.
[2] Union Ex. B 7.
[3] Tr., pp. 381, 415.
[4] Tr., pp. 381, 551-2; 12 Companies Ex. B-10.
[5] Tr., pp. 89, 122-3, 130, 135.
[6] Union Exs. B, p. 13, B 7.
[7] Union Ex. B-7; Tr., p. 122.
[8] Tr., pp. 86, 211, 216, 231.
[9] Tr., pp. 17, 366, 381, 393, 395.
[10] 12 Companies Ex. B 2; Union Ex. B 1; Tr., pp. 366-381.
[11] Tr., pp. 17, 506; Union Ex. B 17.

(b) *Scheduling of Work and Vacations*

In testimony before the Board, the companies insisted that modifications of the contract language relating to scheduling of work are also vital.[37] This issue affects all twelve companies with the exception of Wheeling and Youngstown Sheet and Tube.[38] As noted above, the companies have brought their proposal relating to vacation scheduling under the heading of scheduling of work. This issue significantly affects the twelve companies with the exception of Allegheny Ludlum, Wheeling, Colorado Fuel and Iron, Kaiser, and Inland.[39]

The companies proposed a considerable number of changes in the contract language relating to work schedules in their original submission of contract language on June 22. In the October 1 proposal to settle the strike, the companies indicated a willingness to narrow their request for changes in work schedule provisions "to the bare essentials necessary to comport reasonably with the requirements of the business without incurring penalties."[40] The companies' objective was to obtain the right to change schedules after posting, without penalty, if the requirements of the business should make this necessary.[41]

The union stated that it was willing to make some provision for greater flexibility in scheduling, provided the companies would accept penalties for failure to comply with the scheduling provisions.[42] In support of this approach to the problem, the union argued that, under present contracts, the companies violate scheduling provisions without the imposition of a penalty in most situations.[43]

The companies also desired to schedule vacations throughout the year[44] as do five companies now. Bethlehem and Jones and Laughlin are limited to scheduling between April 15 and December 31. Youngstown Sheet and Tube and Great Lakes Steel may schedule only between May 31 and December 31; while U. S. Steel, Armco, and Republic may schedule only between May 1 and October 1.[45] The proposal relating to vacation scheduling was only introduced during the October 15 hearing before the Board. There was no opportunity for the union to express its view.[46]

[37] Tr., pp. 387, 470.
[38] 12 Companies Ex. F.
[39] 12 Companies Exs. B-10, I.
[40] 12 Companies Ex. B-10.
[41] 12 Companies Ex. B-10.
[42] Tr., pp. 31, 230.
[43] Tr., pp. 91, 250.
[44] 12 Companies Exs. B-10, F; Tr., p. 471.
[45] 12 Companies Ex. F.

(c) *Wildcat Strikes*

The companies maintained that wildcat strikes under the current contracts are a serious problem. They insisted that changes in contract language are essential adequately to deal with them, despite the fact that the union, at the international level, "sincerely wants to make our provisions against no strikes effective."[28] On October 1, the companies offered to withdraw a previous request for the automatic loss of vacation pay and supplemental unemployment benefit credits by employees involved in wildcat strikes.[29] The remaining portion of the proposal appears to be designed to make the local union, as well as the international union, responsible for wildcat strikes by making it a signatory to the agreement and to authorize the discharge of any employee who participates in a wildcat strike irrespective of whether other employees are similarly disciplined.[30]

The union was adamant in opposition to any changes in the contract language relating to wildcat strikes. It asserted that Section 4 of the U. S. Steel contract, and similar provisions of other contracts, provide for local, as well as international union, responsibility for wildcat strikes. It also asserted that present contract language amply supports the right to suspend or discharge employees who participate in wildcat strikes.[31] The union's contention was that punishment under management's proposal would be at the whim of the company, whereas the current language permits an arbitrator properly to modify the penalty where other individuals of greater guilt have not been penalized.[32]

The companies took cognizance of the assertion of union counsel that Section 4 of the U. S. Steel contract does establish local union responsibility. Even if this is the case, there are four companies that require contract changes since there are only eight companies with language similar to U. S. Steel. All twelve companies seek clarification of the contract to support the right to discharge any employee who participates in a wildcat strike.[33]

(d) *Union Proposals for Contract Changes*

During the early stages of negotiations, the union submitted a "comprehensive" list of contract changes, some of which the union sought to have incorporated in the new agreement.[34] They were

[28] Tr., p. 160.
[29] 42 Companies Ex. B 10; Tr., p. 165.
[30] Tr., pp. 160-166.
[31] Tr., pp. 28, 93.
[32] Tr., p. 237.
[33] Tr., p. 166; 42 Companies Ex. 4.
[34] Tr., p. 98.

all rejected by management during the negotiations which followed.[58] In its testimony before the Board, the union limited its presentation to a group of issues it regarded as major in character and indicated that the remaining issues could be resolved in negotiations.[59] The major union proposals relate to contract changes on the following: (1) agency shop, (2) grievance procedure, (3) rates of pay, (4) contracting out, (5) work schedules, (6) overtime, (7) vacations, (8) seniority, (9) safety and health, (10) military service, and (11) severance allowances. The union proposal with respect to each of these subjects and the union argument relating to them have been set forth in Union Ex. H. The Board's record does not include the companies' position with respect to these proposals. The Board assumes, on the evidence before it, that these proposals are negotiable.

(c) *Miscellaneous Issues*

There are a considerable number of other issues which remain unresolved. Some of these relate to particular groups of employees, such as salaried, office and technical workers; some relate to individual companies or special groups of companies, such as iron ore mines and lake shipping; others relate to provisions for contract clauses to implement any agreement which might be reached. It appears that these issues can be resolved after a solution has been found for the two basic issues which divide the parties.

* * * * *

The parties resumed negotiations on contract issues, as well as economic issues, following the close of the Board's hearings on October 15. The new offers and positions of the parties are discussed in Section 3 of the report. The offers of the parties are set forth in Appendices B and C.

V. *The Issues and Positions of the Parties as of October 18*

The foregoing sections of the report present the history of the issues and of the positions of the parties up to the conclusion of the Board's hearings on October 15. Following the conclusion of the hearings on that day, negotiations were resumed. Each party made a new offer which was reviewed by the Board at its public hearing on October 18. The texts of the new offers of the union and the companies are contained in Appendices B and C, respectively.

[58] Tr., p. 226.
[59] Tr., pp. 11, 211, 215.

In the negotiations which took place on October 16 and 17, the companies set aside the preconditions concerning contract clauses, on which they had earlier insisted prior to consideration of the economic issues. They sought agreement on the economic issues. Each side made a new offer, and each came closer to the position of the other, but no agreement was reached.

The companies modified their insistence upon a 2 percent per year cost limit and described their new offer as yielding a 2.6 percent increase,[33] an amount corresponding to the long-term increase in output per man-hour in the steel industry cited by Secretary Mitchell in his report.[34] They still maintained, however, that the package proposed by the union could not be absorbed by prospective economies of operation. The union disputed the over-all employment cost which the companies assigned to their offer and rejected the offer as inadequate.

The economic disagreement centered principally around the merits and cost of specific provisions for insurance and pensions, the limitations placed on operation of the cost-of-living escalator clause, and the question of effective dates. On the question of negotiated increases in basic wage rates, which would not take place until the second year under either proposal, the parties are only one cent apart. There are a number of minor disagreements concerning methods of calculating cost and assessing the value of these offers, but these in themselves do not offer serious obstacles to agreement. Comparisons of the two offers is complicated by many factors, including the fact that the companies' offer is for a three-year contract, while the union's offer is for a two-year contract, construed by the companies to be an effective 20-month contract. There are also differing effective dates for different parts of the agreements.

The total package of union requests was computed by it at about 20 cents an hour for the two-year period, exclusive of the effects of wage rate increases on overtime, vacations, holidays, etc., and excluding the possible effect of cost-of-living escalation. The companies assigned a value of 32.1 cents to the same union proposal. This estimate includes both the effects of increases on overtime, vacations, holidays, etc., and a three-cent maximum possible cost-of-living adjustment.

The most recent companies' offer was valued by them at 33 cents for a three-year period. The union placed a value of about 24 cents an hour upon this package.

There seems to be an understanding between the parties that economic changes during the first year of the contract shall be

[33] Tr., p. 649.
[34] 12 Companies Ex. B-7.

confined to so-called fringe benefits. There seems to be further understanding that the fringe benefits in question are in the fields of insurance, pensions, and supplementary unemployment benefits (SUB). The union's request for changes in vacations, holiday premiums, and Sunday overtime benefits appears to have been dropped in its most recent offer.

As to insurance, there are differences respecting both policy and estimates of cost. The basic union demand is that the companies assume the present obligations of the employees under a contributory plan and convert the system to a non-contributory one. The companies object to this change on policy grounds. They propose, however, to assume the cost of a new major medical plan under which employees would pay medical costs up to certain levels before benefits would be payable. The union desires a different form of further insurance coverage. There are significant discrepancies between the cost calculations of the companies and the union, particularly on the question of the prospective cost of the present insurance program in future years. These differences in cost estimates, which reflect both different assumptions as to future costs and different sources of information, are contained in Appendix D. The companies insisted that their costs are conservatively arrived at on the basis of insurance carrier estimates. The union stated that it had not had access to the information available to the companies because, it claimed, of company insistence in prior years that bargaining be confined to benefits. Union estimates were stated to be based on experience and expert actuarial advice.

A number of the proposals regarding pension arrangements are common to the proposals of both parties. In addition, the union seeks an increase in credited years of service from the present ceiling of 30 up to 40, an increase in benefits for past service and in benefits for those already retired, a lump-sum special retirement payment upon the date of retirement, and certain vesting arrangements. As in the case of insurance, there are significant discrepancies between the cost calculations of the parties.

The Board could not ascertain to its satisfaction whether there were significant obstacles to the settlement of the supplemental unemployment benefits (SUB) question.

The parties appeared to be bargaining on the basis that wage rate increases shall begin with the second year, although they are in disagreement as to when the second year shall begin—July 1, 1960, in the case of the union, October 1, 1960, in the case of the companies. The union proposes an increase in basic wage rates of 7 cents an hour; the companies offer 6 cents an hour. The parties are in agreement concerning the additional adjust-

ment in labor grade pay intervals necessary to reflect skill differentials. They are in some disagreement concerning the effect of the proposals on such other costs as overtime, holiday, and vacation pay. Basically, however, their positions on wage rate adjustment, exclusive of cost-of-living escalation, leave them not much more than a cent apart.

There is still substantial disagreement on the question of adjusting wage rates in accordance with the rise in the cost of living, although each party has changed its original position. The union has modified its original insistence on maintenance of the previous escalator provision. It has offered to waive all cost-of-living adjustments that might arise under the clause prior to July 1, 1960. This, it stated, involves foregoing at least two cents that would be due employees even if the cost of living were not to rise further; it makes this offer on the condition that the companies agree to assume present employee insurance obligations. In addition, it offered to place a three-cent ceiling on any additional escalation which may result during the second contract year.

The companies have modified their original proposal that the cost-of-living escalator provision be dropped. They propose, instead, that the clause be operative only if the cost of living rises to such a degree that an increase of more than 6 cents would be called for in the second year of the contract, or an increase of an additional 6 cents called for in the third year of the contract. In either event, a 3-cent ceiling is to be set on additional wage increases arising from this clause.

The union proposal of October 15 contained suggested contract provisions regarding: (1) a joint committee to study automation and local working conditions, (2) seniority, and (3) the union shop.[57] The union proposed to establish a joint committee to study problems resulting from automation and technological change, and local working conditions, and to make recommendations to the parties. In the words of the union, the committee would be authorized to settle problems in these areas by mutual agreement.

The seniority proposal was designed to give greater protection to laid-off employees as against new applicants. The union's third proposal was that the present union shop provisions be retained and that where state laws forbid their enforcement, the maximum permissible form of union security shall be provided.

The companies' proposal of October 17 made no change in the previous position of the companies with regard to local working conditions, scheduling of work and vacations, and wildcat strikes.[58]

[57] Union Ex. O; Appendix B.
[58] 12 Companies Ex. J; Appendix C

On these contract issues, the companies adhered to their testimony of October 15,[79] which encompassed their offer of October 1, as explained by their letter of October 3[80] and as clarified at the hearing on October 15.[81]

The companies' proposal did contain a new suggestion to establish a Human Relations Research Committee composed of an equal number of representatives designated by the parties, under the co-chairmanship of two persons of outstanding qualifications and objectivity, one each to be designated by the company and the union. The committee would plan and oversee studies and recommend solutions of mutual problems in the following areas: (a) guides for the determination of equitable wage and benefit adjustments, (b) employment stabilization and other employment problems arising from practice changes to improve the efficiency of operations, (c) maintenance of the job classification system, (d) wage incentives, (e) seniority, (f) medical care, and (g) such other over-all problems as the parties may from time to time refer to such committee.[82]

The union also proposed the establishment of a joint committee with the function of developing a long range formula for the equitable sharing of economic progress. This committee would, under the union's proposal, report to the parties prior to July 1, 1960, and, by mutual agreement, the parties would incorporate an agreed-upon formula in substitution for the wage and cost-of-living provisions scheduled to become effective on July 1, 1960.

The companies also made a proposal relating to seniority which they stated was intended to meet a portion of the union's proposal of October 15 on this issue.

In the public hearing on October 18, the union adhered to the positions outlined in its proposal of October 15.[83] The union also reaffirmed its adamant position regarding the companies' latest proposal as to contract changes. The union contended that the companies' suggestion for a Human Relations Research Committee did not improve the companies' previous proposal on the "local working conditions" question, because it merely provided for a study of problems after the companies, pursuant to their revised clause of October 1, had made unilateral changes in local working conditions.

The companies reaffirmed their willingness to work out appropriate language to solve the various contract problems "within

[79] See pp. 14-24 above.
[80] 12 Companies Ex. B-10.
[81] 12 Companies Ex. G.
[82] 12 Companies Ex. J, p. 3; Appendix C.
[83] Tr., pp. 551-615.

the framework of the ideas outlined to the Board on October 15."[4] In his closing remarks, however, the companies' spokesman offered to submit "local working conditions" to binding arbitration by a three-man board—one company, one union, and one selected by these two— for a solution within sixty days."[5] This board of arbitration, under the companies' proposal, would deal with one question: "What, if any, changes should be made in the local working conditions provisions to enable the companies to take reasonable steps to improve efficiency and eliminate waste with due regard to the welfare of the employees."[6]

The Board assumes, from the complete testimony on October 18, that the companies still adhered to their position concerning the other contract issues discussed on October 15.

As we submit this report, the parties have failed to reach an agreement and we see no prospects for an early cessation of the strike. The Board cannot point to any single issue of any consequence whatsoever upon which the parties are in agreement.

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[4] 12 Companies Ex. 4.
[5] Tr., p. 690.

APPENDIX A

The Offers and Demands on the Economic Issues, as of October 15, and Their Estimated Costs

The economic proposals differed widely. Using companies' estimates of the value of the proposals made by the two parties, the union's proposals would cost about 38¢ an hour over a two-year period; the companies' proposals, 15¢. Using the union's estimates, the values would be 50¢ and 10.2¢, respectively, for a two-year period.

There are many explanations for these differences in estimates of cost. One of the most important revolved around the question whether the proper measure is the increase in employment cost incident to changes in wage rates or whether the proper measure is the changes in wage rates alone. The union generally excluded the effect of wage rate increases on overtime, holidays, etc., and argued that this is traditional practice. The companies included these costs, arguing that the total effect of any wage increases upon employment costs must be evaluated in reaching decisions on negotiable settlements. There were also differences in the methods of computing these costs, as well as in the methods of computing the costs of insurance, pensions, and supplementary unemployment benefits.

The companies' offer of October 1 consisted of a two-year agreement which, as appraised by them, would have raised total employment costs for wage earners by an estimated 15¢ a man-hour worked by the end of the contract period. This was stated by the companies to represent a 2-percent increase in each contract year. The cost-of-living escalator clause would have been discontinued.

The allocation of the companies' overall proposal was as follows:

First year, 5.0¢, consisting of increased insurance benefits[1] (2.5¢ an hour), pensions (1.1¢), and supplemental unemployment benefits (2¢). Included were:

(1) an increase in life insurance, sickness and accident benefits, extended periods of life insurance, and hospital and surgical benefits during layoffs, and other changes.

(2) an increase in minimum pension benefits for each year of service after October 31, 1959, to $2.60 a month (from $2.50); an increase in minimum disability pensions to $100 a month (from $90), and liberalized pension provisions for early retirement and laid-off employees.

[1] Companies Ex. J-1.
[2] Companies Ex. B-10.

(5) an increase in contributions for supplemental unemployment benefits from the present 3¢ plus a 2¢ contingent liability, to a 5¢ cash contribution.

Second year. Increases in standard hourly rates ranging from 6¢ in the lowest job class (job class 1-2) to 12¢ in job class 32. The wage increase was valued at 9.8¢ an hour, including 7.3¢ as an average increase in standard rates and 2.5¢ for the effects on incentive earnings, premium pay for overtime and holiday pay, etc.

The companies indicated a willingness to substitute other changes for those proposed, so long as the allocation did not increase the 2 percent limit on employment costs for each year. The new agreement would have become effective on the date of signature and the changes in fringe benefits two months later. The effective date of the second year changes in wage rates was not stated.

The union computed the companies' proposals[3] at 10.2¢, including 1.89¢ in the first contract year, and 8.3¢ the second year (7.3¢ in base rates, plus 1¢ for incentive pay). It also argued that since the company proposal on insurance was contributory, it would have reduced employees' take-home pay during the first contract year by 2½¢ an hour and that abandonment of the cost-of-living escalator clause would have deprived the employees of at least a 2¢ an hour increase effective January 1, 1960. The union valued the companies' first-year proposals at 1.42¢ for the increase in insurance benefits, and 0.47¢ for pension improvements. The union assigned no value to the proposed SUB changes since it stated that they involved changing a contingent 2¢ liability into a cash contribution. The 1.5¢ an hour difference between the companies' and the union's valuation of the second-year wage rate increases resulted from the companies' inclusion of the effects of increases in wage rates on premium pay for Sunday and overtime work and on pay for holidays and vacations and the union's exclusion of these payments. The union position was that, even were these payments to be included, the companies' figure would still have been 0.7¢ too high.

The companies' offer was variously valued by the union at 1.14 percent[4] and 1.4 percent[5] per year.

The union placed a value of 15¢ an hour per year on its own proposals made in testimony before the Board.[6] Its proposals included: (1) wage rate increases ranging from 7¢ in the lowest,

[3] Union Ex. D, p. 44ff.; Union Ex. B-6
[4] Union Ex. B-5
[5] Tr., p. 73
[6] Union Ex. B, p. 3

job class to 13¢ in job class 32 in each contract year—valued at an average of 9.1¢, including the effect on incentive pay but not the effect on overtime, holiday pay, etc.; (2) continuation of the cost-of-living escalator clause, the value of which was not included in the 15¢ package although the union stated that continuation of this clause would increase wages by 2¢ effective in January 1960, even if the Consumers' Price Index did not rise further; (3) changes in supplementary benefits valued at 5.6¢ an hour.

The proposed 5.6¢ an hour change in supplementary benefits was stated by the union's attorney to include holiday premiums, vacations, Sunday overtime, pensions, insurance, and supplemental unemployment benefits.[7] The specific proposals for pensions, insurance, and supplemental unemployment benefits, as spelled out in other union testimony,[8] exceeded 5.6¢. Maximum union proposals, from which a choice of benefits would presumably be made, included:

(1) Making the insurance program non-contributory[9] (about 5.5¢ based on present system), increasing life insurance (similar to companies' proposals), extending the period of coverage of life insurance and hospital and surgical benefits for laid-off employees (similar to the companies' proposals), increased sickness and accident benefits (also similar to the companies' proposals), and other insurance improvements.

(2) Improvement in pensions valued at somewhat more than 2¢ an hour,[10] including an increase of $5.00 a month in pensions for those already retired, liberalized benefits for early retirement or laid-off employees, liberalized vesting provisions, an increase in minimum pensions to $2.60 per month for each year of service after October 31, 1959, and $2.50 a month for each prior year, an increase in the number of years of service used in calculating pensions, a rise in minimum disability pensions (to $100 from $90), special cash payments at time of retirement, and other pension changes.

(3) Changes in supplemental unemployment benefits provisions, including an increase in cash contributions to 5¢ a man-hour, re-crediting of the contingent liability accumulated under the previous contract, payment of benefits after termination of an agreement to members whose unemployment is not the result of the strike (including members of the bargaining unit who had been laid off prior to the current

[7] Union Ex. B, p. 3
[8] Tr., p. 315ff.
[9] Tr., p. 320.
[10] Tr., p. 347

strike), and a slower rate of reduction in benefit levels as SUB funds become depleted.

The union's demands were not stated as a percentage of employment cost.

The companies have stated that the cost of the union's proposals made before the Board on October 12 would entail a cost of about 19¢ a man-hour a year over a three-year period, exclusive of the effect of any cost-of-living escalator clause.[1]

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[1] 12 Companies Ex. J-1.

[Appendix B and C omitted in printing]

APPENDIX D

Comparison of cost calculations of most recent company and union economic proposals in the 1959 steel contract dispute

(Cents per hour)

Provision[1]	Companies' proposal of October 17		Union proposal of October 15	
	As valued by unions	As valued by companies	As valued by unions	As valued by companies
Insurance	1.68	6.8	7.8	10.7
Increase in cost of present program		2.70	.96	2.70
Pensions	0.9	1.2	[2]2.28	5.1
Increased minimum benefit and increased maximum years of credited service		.25	.75	2.83
Supplemental Unemployment Benefits	0	2.0	0	2.0
Wage rates:				
First contract year	0	0	0	0
Second contract year	[3]9.1	9.7	10.32	11
Third contract year	9.1	9.7	Proposal for 2-year contract only	
Cost-of-Living Escalation (c-o-l)	0	[4]Max. 3.6	Max. [5]3.	[4]Max. 3.6
			20.40 plus max. 3 cents for c-o-l	[6]28.8 plus max. 3.6 cents c-o-l
TOTAL, 2-year period	23.8			
TOTAL, 3-year period		29.4, plus max. 3.6 cents for c-o-l		

Steelworkers supplementary benefits proposals for first contract year to be effective on November 1 or, in case of SUB, on date of contract signature; company proposals on supplementary benefits January 1, 1960, except for SUB which will be effective on date of signature. Wage rate changes July 1, 1960, in case of Steelworker proposals; companies as of October 1, 1960 and October 1, 1961.

[1] No calculation available.

[2] For companies with 30-year amortization; for 23-year amortization estimate would be 2.55 cents.

[3] Including effects on premium pay for overtime and Sunday work, holiday and vacation pay. Excluding these effects, estimate would be 8.21 cents.

[4] Including effects on premium pay for overtime and Sunday work, holiday and vacation pay. Excluding these effects, estimate would be 9.4 cents.

[5] Including effects on premium pay for overtime and Sunday work, holiday and vacation pay.

[List of Exhibits omitted in printing]

[Caption Omitted in Printing]

STIPULATION

It is hereby stipulated by and between the attorneys for the Plaintiff and the respective attorneys for the Defendants as follows:

1. The Defendants, and each of them, hereby waive service of process and submit themselves to the jurisdiction of this Court.

2. This case shall be submitted to the Court upon final hearing immediately upon the filing of the petition of the United States of America.

3. At such hearing all parties shall submit their evidence by way of affidavits and exhibits and no oral testimony shall be submitted by any party, each party reserving the right to object to any affidavit or exhibit offered by any other party, on the ground of irrelevancy, immateriality, or incompetency.

4. All Defendants hereby waive their right to file any responsive pleading to the complaint with the exception of the United Steel Workers of America, which will file its answer at the hearing.

George Cochran Doub
Assistant Attorney General
Attorney for Plaintiff

Arthur J. Goldberg
Attorney for Defendant, United Steel Workers of America

John C. Bane
Reed, Smith, Shaw & McClay

W. K. Montague
Attorneys for all Defendants other than Defendant United Steel Workers of America

[Caption Omitted in Printing]

ANSWER OF DEFENDANT UNITED STEELWORKERS OF AMERICA

Defendant United Steelworkers of America (hereinafter sometimes referred to as the Union) answers the "petition" herein as follows:

1. Defendant Union admits that Section 208 of the Labor-Management Relations Act, 1947 (29 U.S.C. 178) attempts to give this Court jurisdiction over the subject matter herein but denies that this Court has jurisdiction. Further answering said paragraph, defendant alleges that the "petition" does not present a "case" or "controversy" within the meaning of the United States Constitution, Art. III, Sec. 2, and that the strike sought to be enjoined by the Petition herein does not imperil the national health and safety as required by Section 208 of the Act.

2. Defendant Union admits the allegations contained in paragraph 2.

3. Defendant Union admits the allegations contained in paragraph 3 of the "petition," except that it denies that it is the authorized bargaining agent or representative of all of the employees of the other defendants. Further answering the allegations of paragraph 3, the Defendant Union admits that it is the authorized bargaining agent or representative of some employees of the other Defendants.

4. Defendant Union admits the allegations contained in paragraph 4.

5. Defendant Union admits the allegations contained in paragraph 5.

6. Answering the allegations of paragraph 6, the Defendant Union denies that the President of the United States on October 9, 1959, or at any other time, made a finding that the strike in the steel industry will imperil the national health and safety. Further answering the allegations of said paragraph, the Defendant Union asserts that on October 9, 1959, the President of the United States, by Executive Order 10843, certified only that it was his opinion that the said strike will imperil the national health and safety and did not purport to make a finding with respect thereto. The other allegations of paragraph 6 are admitted.

7. The Defendant Union admits the allegations contained in paragraph 7.

8. The Defendant Union denies each and every allegation contained in paragraph 8 of the Petition.

9. Answering the allegations of paragraph 9, the Defendant Union denies that the current strike, if permitted to continue, will imperil the national health and safety. It admits the other allegations of said paragraph. The facts showing that the national health and safety will not be imperiled if the strike is permitted to continue or recur are set forth in the affidavits attached hereto and made a part hereof.

10. The Defendant Union denies the allegations of paragraph 10.

Further answering the "petition," the Defendant United Steelworkers of America alleges as follows:

First Defense

The Petition does not set forth a case or controversy within the judicial power as set forth in Article III, Sec. 2 of the Constitution of the United States.

Second Defense

The form of action herein is improper, contrary to the Rules of Civil Procedure and does not state a claim or purport to state a claim upon which relief can be granted.

Third Defense

Should this Court determine that it has jurisdiction in the premises, defendant asserts as a separate and distinct defense against the relief requested that equity requires that the relief requested by the Plaintiff be denied.

Fourth Defense

Should this Court determine that it has jurisdiction in the premises and that relief should be granted, the Defendant asserts as a separate and distinct defense that any injunction or restraining order entered herein should expressly provide that any new collective bargaining agreement entered into between the Defendants shall be applied retroactively to cover any period subsequent to the date of expiration of a collective bargaining agreement during which work is performed for the Defendant employers pursuant to the injunction issued by this Court.

WHEREFORE, the United Steelworkers of America, one of the Defendants herein, prays

1. That the "Petition" herein be dismissed;

2. That the relief prayed for in the "Petition" be denied;

3. That, if the injunction prayed for be granted it be modified by amending the relief requested by paragraph 5 of the prayer for relief by adding thereto the following: "and that any terms and

conditions of any such settlement which are applicable during the first year of such settlement shall be made effective as of the expiration date of the prior agreement relating thereto, or the effective date of this injunction, whichever is later."

United Steelworkers of America
Arthur J. Goldberg,
General Counsel
David E. Feller,
Associate General Counsel
Elliott Bredhoff,
Associate General Counsel
Jerry D. Anker,
Assistant General Counsel
J. Alfred Wilner,
Counsel
Ernest G. Nassar,
Counsel

VERIFICATION

CITY OF WASHINGTON
DISTRICT OF COLUMBIA } ss

ARTHUR J. GOLDBERG, General Counsel, United Steelworkers of America, being first duly sworn, says that he has read the foregoing answer of the United Steelworkers of America and knows the contents thereof and that the same is true of his own knowledge except as to the matters which are therein stated to be on information and belief and as to those matters he believes them to be true.

Arthur J. Goldberg

Subscribed and Sworn to Before Me
this 19th day of October, 1959.

Notary Public
My commission expires 14 November 1959

[Caption Omitted in Printing]

AFFIDAVIT OF DAVID J. McDONALD

DAVID J. McDONALD, being duly sworn, deposes and says:

1. I am President of the United Steelworkers of America, one of the defendants herein. In that capacity, I have been the principal officer on the union's negotiating team throughout the negotiations with the Basic Steel Industry which have taken place in 1959. I have personally participated in the negotiating meetings and, in addition, have had innumerable private conversations with R. Conrad Cooper, the head of the negotiating team for the 12 major steel companies. I have also, together with my associates, engaged in meetings with Roger Blough, Chairman of the Board of the United States Steel Corporation; Arthur B. Homer, President of Bethlehem Steel Corporation; Avery C. Adams, Chairman of the Board of Jones & Laughlin Steel Corporation; C. M. White, Chairman of the Board of Republic Steel Corporation; Joseph L. Block, Chairman of the Board of Inland Steel Company; and Edgar F. Kaiser, Chairman of the Board of Kaiser Steel Corporation. As President of the International Union I am also chairman of each of the union's individual negotiating committees for the respective major steel companies. I have received full and complete reports from the assistant chairmen of each of these committees as to the course which negotiations have taken with each of these separate companies.

2. I have similarly been the union's principal officer in the negotiations with the companies in the basic steel industry which took place in 1956, 1955, 1954, and 1953. In the negotiations which took place prior to 1953, Philip Murray, the then President of the Union, was the union's principal negotiator. As Secretary-Treasurer of the union, a position which I occupied since the United Steelworkers of America was organized, I assisted President Murray in negotiations with United States Steel and I was personally in charge of the negotiations with many of the other companies in the basic steel industry. On the basis of this experience, I believe that I am as fully qualified as any person in the United States to make an estimate of the bargaining position taken by the basic steel companies in the 1959 negotiations.

3. The last collective bargaining agreements between the union and the major companies in the basic steel industry were negotiated in 1956 and had expiration dates of June 30, 1959. The negotiations concerning the terms and conditions of new agreements began early in May, 1959, in New York City. They continued thereafter on an almost daily basis until, at the end of

June, the union, at the request of the President of the United States, agreed to extend the terms of the 1956 agreements until midnight of July 14, 1959. Meetings continued during this extension period and, when no settlement was reached, a strike in the basic steel industry began on July 15, 1959.

Negotiations continued, subsequent to the beginning of the strike, in New York, in Washington, D. C., and in Pittsburgh, Pa They terminated in Pittsburgh, Pa., on October 7, 1959. After the President of the United States invoked the provisions of the Taft-Hartley Act on October 9, 1959, negotiations were resumed at the suggestion of the Chairman of the Board of Inquiry, which had been appointed by the President under the Taft-Hartley Act. These negotiations terminated on Saturday, October 17, 1959.

4. The Union's position in these negotiations is generally described in the statement which I made to the Board of Inquiry on Monday, October 12, 1959, which is attached as Appendix A to this affidavit and incorporated herein. All of the statements contained therein are true to the best of my knowledge and belief

5. On the basis of statements made to me by representatives of the major steel companies in the course of the negotiations and on the basis of the positions taken by the representatives of the industry, I have reached the firm conviction that the companies in this dispute have refused, and still refuse, to make a reasonable settlement of this dispute because they anticipate that in the absence of a settlement the workers in the industry will be forced to return to work without any improvements in their wages, hours, and working conditions under an injunction issued under the Taft-Hartley Act. I have been informed, and I believe, that the issuance of such an injunction has played an integral part in the calculations of the industry's leaders as to the course of action they should pursue in negotiations with the union.

5. On the basis of the information available to me, I firmly believe that if the injunction which is anticipated by these companies should not be issued, a major stumbling block to the negotiation of a voluntary settlement of this dispute will be removed, and a settlement of the dispute will be achieved through the process of free collective bargaining. It is, of course, impossible to predict with certainty the time which will be required to reach such a settlement or what the terms of the settlement will be. I am certain, however, that the anticipation that the strike will be ended or interrupted by an injunction, has operated to remove the economic pressures which would otherwise be felt by both sides to reach a settlement, and that those pressures will operate to assure a settlement within a short period of time if the anticipation of an injunction is removed.

My firm belief that the anticipation of an injunction has, in fact, prevented a settlement from occurring to date is supported by the views expressed by such impartial experts as George W. Taylor, the Chairman of the Board of Inquiry appointed by the President in this dispute, and former Chairman of the National War Labor Board and the Wage Stabilization Board, Nathan P. Feinsinger and W. Willard Wirtz, both former members of the National War Labor Board and both former Chairmen of the Wage Stabilization Board, in interviews published in the October 19, 1959, issue of U. S. News & World Report, and reproduced in part, in Appendix B to this affidavit.

My belief is further supported by the events in the 1950 national coal strike. A Taft-Hartley injunction was requested and a temporary restraining order was issued in that dispute. The 370,000 striking coal miners, however, failed to return to work despite repeated orders to do so from the union. Contempt proceedings were brought against the union, but the union was adjudged not guilty on March 2, 1950. (25 LRRM 2447) When the coal operators saw that they could not rely on an injunction for restoration of operations, they sat down with the union and bargained out a settlement within 3 days. (25LRRM 16)

6. I wish to take the opportunity to state here again, under oath, that as the chief representative of the union in these negotiations I have always been anxious and willing to reach agreement with the companies on any settlement which I could, in good conscience, recommend to the members of the union as fair and reasonable. It was always my purpose to avoid a strike by any reasonable compromise of the issues in dispute which would not sacrifice the interests of the workers in the industry who have elected me to represent them. A strike nevertheless occurred. I am acutely conscious of the deprivation and the losses which that strike has inflicted on the members of the union. It is my firm belief that if the injunction requested in this suit is not issued the strike will be settled expeditiously on honorable terms which are fair to all parties.

David J. McDonald

Subscribed and sworn to before me
this —— day of October, 1959

Notary Public
My commission expires 1 November 1959.

Appendix A to Affidavit of David J. MacDonald

UNITED STATES OF AMERICA
WASHINGTON, D. C.
THE BOARD OF INQUIRY

Created by Executive Order dated October 9, 1959

In the Matter of the
Labor Disputes Between
The United Steelworkers of America
and
Certain Companies in the Steel Industry

STATEMENT OF DAVID J. McDONALD, PRESIDENT OF THE UNITED STEELWORKERS OF AMERICA

This Board of Inquiry has been directed by the President of the United States to inquire into the issues involved in the disputes between the United Steelworkers of America and the various basic steel companies and to report to him with a statement as to those issues. Yours is a very difficult task and the Union is prepared to cooperate in every possible way with the Board so that you can fulfill the mission which you have been assigned.

We are prepared to supply any materials which you may require relating to the history and development of this dispute. We have prepared, and Mr. Arthur J. Goldberg, the General Counsel of the Union, will present to you a very detailed statement as to the issues in dispute and the union's position in this grave controversy. As part of that statement we will provide you with a copy of proposals made by both sides in these disputes, as well as additional documents which will serve to assist you in ascertaining the issues.

It will not be my purpose to review these matters. It will be my purpose, rather, to state to you my firm belief as to the one single issue which underlies all of the material which you will receive.

In my view, there is really only one issue in all of these disputes. That single issue has found expression in various ways. There have been company proposals, both of a general and of a detailed nature. These will be given to you. But these proposals, and the issues which they cover, are only symptoms or evidence, if you will, of the single underlying cause of our dispute.

What is that real issue? It is simply whether this industry and this union are to continue to maintain the cooperative relationship which we have so laboriously created over the past 20 years -

a relationship in which each party has respect and understanding for the problems of the other and in which neither attempts to demonstrate that it is the master and that the other must bow.

It is and always has been the Union's desire to maintain this kind of relationship.

It is the companies' intention to destroy it.

That, and that alone, is the real issue in this dispute. That is the issue which distinguishes this strike from any other strike which has occurred since the Union achieved recognition by these companies. It is that issue, and that issue alone, which has led to a situation which threatens to lead to free men being ordered to work under the compulsion of an injunction.

There have been, of course, strikes before in the steel industry. It is perhaps inevitable, though regrettable, that two parties will have differences as to the appropriate settlement of the issues between them—both economic and contractual. Under our system of free collective bargaining, failure to resolve these issues can lead to strikes. But our differences in the past and the strikes which those differences have caused have never disturbed the basic assumptions which have been the bedrock upon which our relationship was established and has continued over the years. Until now, neither party has asked for unconditional surrender. Each party has acknowledged that the other must perform its responsibilities and that the other party's actions in attempting to protect its interests are consistent with the maintenance of an overall relationship of respect and cooperation.

I once gave a name to the kind of relationship which we sought to build in this industry. "Mutual trusteeship" I called it, and I believe that the name was well chosen. Management and labor leadership were jointly responsible to the industry and its workers for joint progress.

In those days, I made tours of the plants with Benjamin Fairless, then the chairman of the Board of United States Steel, as a symbol of our cooperative relationship. I was criticized for this and for my concept of mutual trusteeship by some who saw the relationship of management and labor as a perpetual war (cold war if you please). But I believed, and still believe, in what we attempted to build and did in large measure build in this industry.

Today words like "mutual trusteeship" can bring only ironic laughter. A suggestion of plant tours with the executives of U. S. Steel would be only a bitter joke. The reason is simple. There has been a change. And the change has not been in the Union. The change has occurred in the attitude of the leaders of this industry. They have determined to end our traditional relationship

They have determined on class war, class war, as it has been said, from the top.

I have said publicly that the companies intend to break the union. I mean that and I repeat it. Indeed, I insist that this determination by the companies constitutes the real basis for this dispute. I think you should understand, however, what we mean by "break the Union."

This industry could not operate without a union. A binding contract with a union is the mechanism by which the rules and regulations are enforced which must govern the day to day relationship of employer and employee. Without the union and without a contract, nothing would be fixed, nothing would be stable, and the result would be chaos. The union contract is the method by which a rule of law is established to govern the relationship of employer and employee.

This can best be illustrated by pointing to a provision in our agreements which have recently expired. There is a clause in the rates of pay section (section 9(g) of the U. S. Steel Agreement) which says that no employee can even allege that a wage rate inequity exists and that no grievance alleging a wage rate inequity shall be filed or processed. Before there was a union and a union contract, there was no method agreed to by the employees and the companies as to how rates of pay should be established for various jobs. The rates paid for particular jobs constituted a chaotic jumble. Where particular employees were in a position to exert influence in order to force an increase in the particular rates paid for their jobs, they did so. Other employees, not so fortunately situated, were disadvantaged in comparison. After the union was recognized there was still no agreement as to the rates which should be paid for particular jobs and complaints on inequities as between jobs constituted a major source of trouble in the steel industry.

By the cooperative effort of both parties aided by advice from the War Labor Board, of which the distinguished chairman of this Board of Inquiry served as vice-chairman, we have solved that problem in the industry. We have described and classified the jobs and established the relationship which shall prevail between the rates paid for different kinds of work. And, once such agreement was established, there was no occasion for an individual employee to complain that the rate established for his job was unfair as compared to the rate paid for another job. He, through his union, had agreed to the system under which the rate of pay for his job had been established. The parties established by contract the law of the plant in that regard. They established an orderly system for the determination and for the

retention of the individual job rates for the individual jobs which was binding, by agreement, on both the company and the individual employees.

The union agreement thus established the necessary ingredient for the elimination of a major source of constant turmoil and uncertainty in the plant. And once the agreed relationships were established the parties specifically provided that no employee should have a right to complain of an inequity as against another employee in the rate of pay established for his job.

This constitutes just a single illustration of my statement as to the necessity for a union and a union contract for the companies. There are many, many others. It is the union contract which specifies the vacation an employee is entitled to, the method of computing his pay, his holidays, his shift premiums, etc. In the day to day operation of the plants the contract provides the guide and the law to govern these matters and no employee complaint is entertained except as he complains that he has not received what is provided under the contract.

Indeed, our contracts go further. There are thousands of details which, in the nature of things, vary so tremendously that they cannot be specified in the agreement. Lunch periods, relief arrangements, wash-up time, crew sizes, seniority rules, overtime distribution—these matters, which we call local working conditions, determine whether a job is a good one or not and whether the plant is a good place to work. Our contracts provide a rule dealing with these matters one which you will hear much about as the case proceeds.

That rule is simple. It provides, first, that no employee shall have a contractual right to have a local working condition established. Management is free, in the first instance, to proceed unilaterally or to agree locally on such matters and no employee can file a grievance.

Second, we provide that once a local working condition is established, either by agreement or by management action so consistently followed that it can be said to be a custom or practice, then that agreement, custom or practice is to be regarded, unless it takes away rights otherwise granted to the employees in the agreement, as the law of the plant, just as if it were written into the overall agreement.

Finally, we provide that if the underlying conditions upon which the custom, practice, or local agreement is based are changed by management, then the local working condition is no longer binding and management is free to act, as it was in the beginning, to adjust to the change in circumstances.

These provisions, as well as the specific provisions of the agree-

ment, constitute the law of the plants, the agreed upon limitation of both management's rights and the employees' rights. Together with the no-strike clause, they provide the assurance to management which it needs in order to assure stability and certainty in the daily operations of the plants.

When I say, therefore, that the single issue in this strike is whether the companies will break the union, I do not mean that they intend to eliminate the union or the union-contract. They could not afford to.

What I do mean is that the companies intend to deprive the union of an effective role in return for its willingness to establish for all of the employees the rules which prevent them from making individual complaints as to their wages, their vacations, their holidays, etc. That effective role is the right to participate, jointly with the companies, in the establishment of the rules, the right to insist upon the protection of existing practices, and the right to share in the material benefits which labor of the employees helps to create. What the companies intend, and what they indeed hope to accomplish in this dispute, is to convert the union from an equal partner into a convenient vehicle for the imposition of management's unilateral determination with respect to employee rights. We are to agree to a contract, so that the employees will not have the right to complain, or to strike, but the contract and the major working conditions are to be the ones dictated by management.

You will see, as you explore the proposals which have been made to the Union in this dispute, that what the companies proposed to us is the appearance, the facade, of a union agreement, but with the guts taken out of it. What they hope to achieve is a document in which the most important single provision is the no-strike clause. The companies are to be free to eliminate benefits, to disturb and destroy established conditions, to take any action not specifically forbidden by the agreement which will save them money and improve their already record profits. And the union is to be the policeman which is to insure that no employee will object by refusing to work under those conditions.

This is, as you shall see, what the companies have proposed. They know that this union could not voluntarily accept the propositions which they have made to us. And so, they have determined upon a course of action designed to humble the union, to demonstrate to the union the overwhelming economic power of the industry and thus to make the union a supplicant, grateful for the crumbs which the lords and masters of the industry are willing to grant but unable to stand on terms of equality with

the companies in protecting and obtaining the rights and benefits to which the employees are entitled.

The real issue in this strike and the only issue is whether they will achieve this goal.

Now, six months after the first episode in this dispute, it is clear that we on the union side, despite our constant and repeated attempts to find formulas which would satisfy the companies' legitimate problems and despite our constant and repeated efforts to come up with proposals which could lead to a settlement of this dispute, were engaging in an exercise in futility. The industry has determined from the beginning that the union must be brought to its knees, and no efforts, however sincere or however reasonable, could have prevented the struggle which they insisted upon imposing on the union.

Long before negotiations were scheduled to begin, they made their assessment of the situation. 1958 had been a year, not of recession, but of depression for steelworkers. The industry had operated at little more than 50% of its capacity. Hundreds of thousands of steelworkers were on extended layoff and had exhausted their financial resources in keeping body and soul together in the absence of any pay check—sometimes for more than a year. The industry was certain that the union, therefore, was not in a position to wage an extended struggle.

On the management side, however, the picture was quite different. Operating at only a little more than 50% of capacity the companies were able, because of the exorbitant price increases which they had foisted on the American public, to make reasonable profits. Those profits were less, to be sure, than in a very few prior years, but they were, nevertheless, substantial. With the business upturn which had begun in the fall of 1958, the companies could look forward to a profit potential which was truly fabulous. They were fat and strong. We, they thought, were weak and unready.

There were other elements in the calculation. Newspaper headlines across the nation screamed about labor bosses and labor racketeers. The public reaction to unions and their leadership was probably in as unfavorable a state as could be anticipated in the near future.

The industry strategists believed that all that was needed to set the stage for a fight which would convert the steel workers union into the compliant vehicle for the industry's wishes was an issue. And the issue was at hand: inflation. This was a popular issue. The President of the United States and responsible public officials were obviously concerned about inflation. Con-

sumers across the country, who saw prices of commodities rising, would be receptive.

It was no matter to the steel companies that they themselves were one of the principal offenders in increasing prices. The steel companies had throughout the years increased the price of steel $3.00 for every $1.00 of wage increase given to the workers in the industry. Secretary of Labor Mitchell has reported that from 1951 to fiscal 1959 the steel industry increased prices a total of $48.00 per ton as against a total of $12.00 per ton wage increase for production workers or a ratio of 4 to 1. None of these things mattered so long as the industry could shout clearly and loudly that it, and it alone, was the guardian of the nation against the dangers of inflation.

Even the cold war could be used as part of the industry's attack. Foreign competition could be made an issue and, despite the fact that there was no competition from Russian steel, somehow the impression could be created that the cold war with Russia was involved. And so in March, 1959, the American Iron and Steel Institute ran an advertisement in newspapers throughout the country showing a Russian steel worker with a Moscow background asking: "Will he take away an American steel worker's job." The fact that no Russian steel has been imported into the United States nor will be imported under any reasonably foreseeable circumstances was immaterial to the deception.

And so, the stage was set, the issues chosen and the play began.

On April 10, the companies addressed a letter to us proposing that we extend our agreements for a year, eliminating the annual improvements in wages and other benefits which had been contained in our previous agreements. This action was proposed as a glorious venture to save the nation from inflation and to enable the companies to compete more effectively with the Russian steel worker so widely publicized by the American Iron and Steel Institute.

The men who manage the steel industry knew that this proposal could not be accepted by the Union. After all, steel profits, even at that point, were at a higher level than ever before in history. For United States Steel, for example, the profits made by the company after all expenses were paid, other than taxes, amounted to almost $2.00 per man hour worked, as contrasted with profits similarly measured in the area of 40¢ or 50¢ ten years ago. The steel companies had raised their prices in mid-1958 despite the fact that they were in a depression. Inflation did not concern them then, as it had not concerned them in the past. By repeated price increases, they had pushed their profit margins up to the highest level in history. Other unions in other industries

had already negotiated wage increases of varying amounts. Many workers whose contracts were not open for negotiation in 1959, such as auto and electrical workers, would receive automatic increases in 1959. The steel companies' proposal for a freeze contrasted vividly with the proposal, which the automobile companies had made and which the UAW resisted, for an extension with the continuation of the annual improvement factor and cost-of-living formula contained in their earlier agreements. The managers of the steel industry knew full well that their proposal would not be accepted.

They did not intend it to be accepted. To make doubly sure, however, they inserted in their wage freeze proposal, as an essential condition, an additional demand that the provision for adjusting wage levels to compensate for increases in the cost of living be eliminated. What they proposed, therefore, was that steel workers would, in fact, suffer a cut in real wages in the forthcoming year if, as everyone expected, the cost of living continued to rise. No self-respecting union could possibly have accepted such a proposal.

At this early date we, on the union side, did not fully recognize what this tactic signified. We regarded it as a prologue to the actual negotiation of an agreement. And so we were willing to gamble that perhaps the steel companies were genuinely interested in fighting inflation and would agree to a non-inflationary settlement.

And so, three days later, we responded to the industry's proposal. We suggested that negotiations begin early because we foresaw the possibility of difficulties in reaching agreement. We also proposed that, in a genuine effort to meet inflation, we agree with the companies in advance on certain principles upon which our negotiations would be based.

The first base we proposed was that we should both assume that there would be no increase in steel prices and that we should bargain out a settlement based on that assumption. Second, we proposed that the parties should agree in advance that they would attempt to bargain out a settlement which would be justified by the increased productivity and profits of the industry, with a reasonable sharing of those increases between the stockholders and the workers without any increase in prices.

If the companies were genuinely interested in the fight against inflation, these principles, which limited the union's proposals to those which could be afforded at present prices, and with a reasonable sharing of the industry's gains between its stockholders and its workers, would be acceptable. Such acceptance would not guarantee that we could agree on what constituted a proper set-

tlement under those principles, but they would at least establish an agreed-upon framework for the discussion.

The industry, of course, rejected our suggestion. They could not very well oppose our proposal that negotiations be begun early. But they refused in advance to agree on the principles which we suggested.

And so, after this prologue, the meetings opened in New York. We thought that we were beginning negotiations which might lead to an agreement within a few weeks. We established offices in the Roosevelt Hotel in rooms which we rented on a weekly basis.

The Industry knew differently. They rented offices in the Chrysler building and took a six-month lease which would not expire until October 15. They had no intention of reaching an agreement when the contract expired on June 30.

I will leave the detailed history of our negotiations to the presentation to be made by our General Counsel. After all, as I have said, that history is only evidence of what I believe the real issue is.

In retrospect, the various offers of settlement which we made and the various devices which we suggested to avoid difficulties and to reach agreement are not really significant. The most significant thing was the statement, repeated again and again by the companies' negotiators, that the whole course of action and the whole relationship which we had developed over the past 18 years was wrong. It should have been clear from that statement that it was not possible to reach agreement. For, if the relationship of mutual respect which we had carefully built over those years was wrong, then the only alternative that must exist in the minds of the industry representatives was company dictation. And if that was their premise, it was futile to try to reach agreement.

But we persisted in being hopeful. There was always the possibility, growing smaller as the days of meetings progressed, that there was somewhere in the industry some desire to reach an honest agreement with us. And as the earnings reports of the companies for the first quarter of 1959 were published it became increasingly apparent, at least to us, that the industry could not rely upon its professed concern about inflation. Those reports showed, beyond shadow of doubt, that the industry could afford increases of the kind which we were suggesting and still have its profits far in excess of any which the industry had ever enjoyed in previous years. We hoped that these public reports would somehow have their effect in persuading the industry representatives that they should reach agreement with us.

In June, disturbed that their prearranged plans might not have the public appeal which they anticipated, they introduced a new issue, namely, "featherbedding." They rarely used that word, but they used words like "wasteful practices" which were interpreted to mean "featherbedding" by newspaper readers and by newspaper reporters. False stories were circulated such as the story about the air conditioned crane cab repeated over and over again.

Let me digress for a minute and tell the members of the Board of Inquiry about that famous crane. The companies were determined to make an issue of what they called restrictive work practices. In order to do this in the public eye, they had to find examples. The example most widely quoted was the air conditioned crane cab. It was said, the crane men who operated the ladles which poured hot steel worked under extremely oppressive heat conditions. Accordingly, and because of these heat conditions, management agreed to provide a spell hand who would relieve the craneman so that he could recover at suitable intervals from the heat. Then the unnamed company air conditioned the cab of the crane and thus eliminated the heat condition which gave rise to the practice of having two men rather than one, operate the crane. But, so the story went, the company was required under the contract to retain two men, instead of one, to operate the crane.

This story is totally false. I have retold it because it has appeared in almost every newspaper which has given a detailed account of our negotiations, as well as in national magazines such as Time, and because it shows the lengths to which the companies would go to create a public issue, even if that issue were false. I do not blame the newspapers but I do blame the companies for circulating this canard. It is perfectly clear under our agreements, unlike some others, that whenever a practice arises on the basis of certain conditions such as the practice of providing relief for a craneman because of heat, the company has the right to change or to eliminate that practice if the conditions which gave rise to it are changed or eliminated. Our contracts so provide, without doubt or qualification. There was a case, in fact, in which the Union filed a grievance in a crane case similar to the one described in the press, but the arbitrator held that under those circumstances the company could dispense with the relief operator. I am sure that the companies will not contest that statement. Indeed, during negotiations, they repeatedly acknowledged that this was in fact the case, although to my knowledge, they never so publicly stated to the press.

So determined were the companies that no agreement would be reached with the Union that on June 22 they presented us with

a set of specific contract proposals. To anyone experienced in collective bargaining, those proposals were positively hair-raising. They contemplated giving the companies the unilateral right to eliminate any condition not specifically set forth in the contract providing benefits to the employees if the company could show that by eliminating the benefit they would save money. Lunch arrangements, relief periods, overtime distribution practices, all of the thousands of individual practices and customs which have grown up over the years and which are not and cannot be spelled out in our master agreement, were to be subject to the restriction that in no case could they prevent the company from increasing the economy of its operations. This was justified in the name of eliminating restrictive work practices.

Nor was this all. The companies gave us language which would give them the unreviewable right to pick and choose among the employees who engaged in wildcat strikes and to discharge those whom the company wanted to discharge and to relieve others of any penalty whatsoever.

They proposed provisions which would have permitted them not only to change employees' work schedules without notice, which they now can do, but also to avoid any possible requirement that overtime be paid when workers were scheduled to work on what would otherwise have been overtime days. This was justified in the name of increasing the ability of the companies to meet the requirements of the business.

They proposed provisions which would have taken away holiday pay from employees if they failed to respond to last-minute, contractually-improper call to work on the holiday even if they had been scheduled off and had made plans based on the expectation of a day off. They proposed to take away holiday pay from employees who exercised whatever option they have under local arrangements to refuse to work overtime on the day after or the day before a holiday. They proposed a whole set of conditions which they knew would be impossible for any self-respecting union to accept.

To make sure that these and other proposals would be rejected, they did not even provide bait that could be seen. If the Union would agree to this whole package of proposals, they said, they would then consider making an offer of some unspecified improvement in welfare benefits during the first year of the contract and some unspecified but "modest" wage increase in the second year. Despite our repeated urging, they would not tell us what these unspecified benefits would be. The promise of an offer served only one purpose: to give the public and the membership of the union the false impression that the company was ready

to share its economic progress with the workers if only the union would agree to eliminate unfair restrictions on management's prerogatives. That was their case for the public.

In order to make that public case, they did not think it necessary to specify what improvements in wages or benefits they would actually make. It was just necessary to say that they would make some improvements. In order to negotiate a settlement, however, even if the Union were willing to accept the industry's conditions, it would have been necessary to specify. But the industry was not interested in negotiating an agreement.

As the June 30 deadline approached, we tried every conceivable device to somehow negotiate an agreement. When it became clear that the 4-man committee with which we were dealing would not make such an agreement, I attempted to obtain meetings with the responsible heads of the largest companies. This was not a publicity gimmick and, in fact, I did not release to the press the fact that I had made such an attempt until my suggestions were rebuffed.

Similarly I wrote to the President of the United States, informed him of the impending failure of the negotiations and suggested that he appoint a fact-finding board, so convinced were we of the justice of our position that we agreed to negotiate on the basis of any facts found by such a board.

The President did not agree to our suggestion because, in his view, Congress did not intend the President to appoint a fact finding board except under the provisions of the Taft-Hartley Act. And so, we proposed to the industry that they agree with us on a privately appointed fact-finding board and agree to negotiate a settlement on the basis of any such board's recommendations. The industry refused.

As the June deadline approached, the President of the United States released the text of my letter to him and his refusal to appoint a fact-finding board, and suggested that the parties continue to negotiate. We agreed to the President's request and executed extensions for a 11-day period.

The membership of the union was not happy with this extension. They resented it and as a result of that resentment portions of the membership refused to continue working. We were determined, however, that nothing would interfere with our attempts to negotiate a settlement. The Union therefore directed the men to return to work and they did so.

But when we again met with the representatives of the industry, the answers were the same. We proposed that the local working conditions issue, the so-called "featherbedding issue" be studied for a year by a committee headed by such men as Ben

jamin Fairless, Clarence Randall and Clinton Golden, men who know the industry from both the company and union sides but who are no longer active participants on either side. The companies refused. We offered letters of intention and interpretation of the local working conditions clause which would have resolved any legitimate doubts as to whether it prevented the companies from making progress. The proposal was rejected. Whatever the Union attempted was rejected.

And so, on July 15, the strike began. As you will see from the detailed history of the negotiations, we did not even then, cease our search for a settlement. Although the companies continued to refuse to make any economic offer to us, we tried to work out the contractual problems. At our suggestion the committees representing the employees at the various companies were brought in and through appropriate subcommittees sought to negotiate the non-economic issues under the various contracts. But again, even on these issues there was no agreement because the companies had determined that there could be no agreement.

Finally on September 25, our so-called negotiations in New York came to an end. During the following week the President of the United States called the officers of the union and the responsible heads of the five major steel companies to Washington. He told us and I assume he told them, that he wanted a settlement. And so, again, we tried to reach a settlement, this time in Pittsburgh.

By then, two things had happened which the Companies foolishly had not anticipated. First, and perhaps most important, the membership of the union had exhibited both an understanding of the issues and a truly remarkable determination. Although they had been on strike for almost 12 weeks, when we went to Pittsburgh, there was not the slightest sign of weakening anywhere. This, I truly believe, the companies had not counted on.

Something else had happened. Slowly the truth about the industry's position in the negotiations was beginning to be felt. They could get away, for a time, with vague statements about the improvements they would offer but, as time went on, it began to be generally appreciated that they had actually not offered one single penny.

And so, in Pittsburgh on October 1 they took a new step. They made an offer. Even then, they sought to avoid the kind of specifics that were necessary if agreement were to be reached. They did not specify that precise nature of the benefits which employees could obtain, but phrased their offer in terms of employment costs in such a way as to make the actual amount available to the employees unascertainable and to make sure that we

would not accept, they still attached contractual preconditions. They continued to adhere to the one demand which they knew we could not accept: the proposal for virtual elimination of the protection of local working conditions and they made their economic offer contingent on our acceptance of their demand on this issue.

We did not reject that offer immediately. In order to negotiate we had to know more about it. And so, for two days, we tried to find out with some precision what benefits they were prepared to give to the employees. Finally, on October 8, we did get some sort of a specification. That specification clearly showed that the offer was designed to be unacceptable.

For publicity purposes it carried a 15 cent price tag, but the actual benefits it provided were insignificant. For the first year, this so-called offer would give steelworkers 2 cent's worth of additional insurance and a half-cents worth of additional pensions—and, to receive it, steelworkers would have to take a wage cut of 2½ cents and give up at least 2 cents more in cost-of-living adjustments. In the second year the offer did provide a wage increase of six cents across the board and 1.3 cents in an increment increase or a total of 7.3 cents by the most generous count.

If we accepted that proposition we would have told the world that the companies had succeeded—the United Steelworkers of America had turned into a company union. And we told the companies just that.

After these negotiations with the industry's "team" had gotten nowhere, I asked for meetings with the heads of the five major companies who had met with me in Washington. They consented to meet, and in that meeting they confirmed my own feeling as to the essential issue in this dispute. They wanted to know why the union had spelled out in such detail to the membership the puny nature of the benefits which would be available under the companies' proposition. Why did we not "build it up" they asked, instead of tearing it down.

Now, analyse that for a moment. What they complained about to us was that we had not acted as sales agents for them in selling their proposition to their workers. What disturbed them was that we were honest in reporting what the companies' offer would mean to the workers. What they wanted was for the United Steelworkers of America to act like a company union, to "build up" something out of virtually nothing so that steelworkers would return docilely to work like lambs. But as I have said before, and as I said then, the United Steelworkers of America is not a company union.

And so, we are here. This strike has continued far longer than any other strike in this industry. In terms of loss of pay and of work, this is the largest strike which has ever occurred in the U.S.A.

Why?

The real issue has not changed. It is whether the Union can be beaten, can be turned into a tool of management, willing to accept whatever crumbs are offered by the powers that control this industry and "build" them up so that the workers will accept them.

That issue can be settled only when the powers that control this industry recognize that they have set themselves an objective that they cannot realize.

This union will not be beaten. This union will not be converted into a tool of management. We will not dictate to this industry. We never have and we cannot do so. We do insist, however, that the workers in this industry and the union which represents them be treated with respect, not with arrogance. We do insist that our relationship be one of mutual respect.

This insistence on our part, and the contrary program of the industry, constitute the crux of this dispute. You gentlemen are required by the law and by the President to inquire into the issues and to make a report. After you make that report, the President, under the law, can direct the Attorney General to seek an injunction. If the Attorney General succeeds in obtaining that injunction, the men who make steel across the nation will be directed by law to return to work. They will return to work if this should occur.

That return to work under force of law is the industry's "ace in the hole." That will show the Union, they are sure, that it is useless to attempt to fight and that the union now and hereafter must meekly bow its head and accept the terms proffered to it. We will be permitted to fuss a little in the future. We will be permitted to go through a little mock controversy, but from here on we will recognize, they believe, that they have the power, that they call the tune and that we would be well advised to comply.

Steel workers will return to work if they are required by law to do so. But the union will not be beaten. The basic issue will remain. There may be a truce enforced by law but there will be no permanent peace. In the end the companies must realize that until they abandon their calculated program to destroy the union as an effective force, they will not be able to continue their rate of progress.

I do not know what facts this board will find. I do not know what you will conclude the issues to be. I do not know whether

the President will seek an injunction against this strike after you report the facts to him, and I do not know whether, if he seeks for an injunction against the strike, the court will grant one.

I do know this: whatever may happen in this proceeding or in the courts, those who today control the destiny of the steel industry will find that they have made a major miscalculation. The relationship of mutual respect which was so laboriously created on both sides during the past 18 years, was a major element in the progress which these companies have made. Those who have deliberately discarded that approach and who have determined upon a course of rule or ruin will learn to their sorrow that the result will be disastrous to all concerned.

Gentlemen, it is a sad day that steel must go the Taft-Hartley route. It is sad because this course constitutes an acknowledgment that collective bargaining has failed in steel. The record shows that the union has done all within its power to make collective bargaining work. We have been unable to do so because of the attitude of the industry and we will be unable to do so in the future unless there is a change in the attitude of the industry. In such a change remains the real hope of a solution of this dispute.

U. S. NEWS & WORLD REPORT

Page 70—Oct. 19, 1959

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Interviews with Labor-Relations Experts

'ANY ANSWER TO STRIKES?'

From three recognized authorities in labor relations, you get answers to questions that people all over the country are asking:

Can't something be done about strikes?

Must wage disputes in big industries, one after another, end in walkouts that cripple the whole economy?

Is arbitration an answer? Fact finding? Injunctions under Taft-Hartley law?

On this much, the experts agree: A solution to the problem must be found. What solution? In these exclusive interviews with U. S. News & World Report, each comes up with his own formula.

Taft-Hartley: 'Not Adequate to Handle Big Strikes'

George W. Taylor, 58, has aided in settlement of labor-management disputes for almost 30 years. He has served as impartial umpire for many companies and unions in arbitration of contract

grievances. He was Chairman of the National War Labor Board in 1945, now teaches at the University of Pennsylvania's Wharton School of Finance and Commerce.

Q Dr. Taylor, is there any practical way to avoid big strikes that threaten the country with an emergency?

A I think that, if parties to a dispute negotiate for a long period and still do not settle the issues between them, then there is an obligation on the two parties to agree between themselves to set up an arbitration board, or a fact-finding board.

The parties themselves should assume this responsibility in the public interest.

Q Do you mean they should agree voluntarily to turn to arbitration or fact finding?

A The question becomes simply this. At the end of negotiations, are the issues that still divide the two parties so fundamental and important that they justify plunging the nation into an emergency?

I think that employers and unions in disputes that seriously affect the public interest have to develop, somehow or other, their own machinery for arbitration. I feel that you must differentiate between the Government's stepping in and saying: "You've got to pay 10 cents an hour more, rather than 5 cents," and saying: "Why don't you agree to a procedure that will result in getting the issue settled?"

The public interest is too great to permit these disputes to come to a dead end.

Q Is there anything to indicate that the two sides to disputes might agree to arbitration or fact finding?

A When I started out in this business of arbitrating grievances, both sides would say: "You can't submit these disputes to arbitration. No outsider can tell us how to run our business, etc., etc." So it was common to close down plants over minor issues.

But gradually there developed arbitration procedures and the parties began to work out solutions for themselves. Procedures vary, industry by industry. Arbitration today is called for in some form in 90 percent of agreements between employers and unions. When I started as an arbitrator, almost no agreements had provision for arbitration.

Q Aren't those agreements between the individual parties to arbitrate on grievance disputes? What is the situation on arbitration of contract terms involving wages and other major issues?

A It used to be said that no issues could be arbitrated. Just as you say now that big issues cannot be arbitrated, it was said in the past that no issues at all could be arbitrated. That is true unless

you can get the parties to agree: "We will submit to arbitrators, or to a board, the decision on this issue and this other issue." In that way you can narrow the range of difference.

Q How long has it taken to get acceptance of arbitration in the case of narrow issues between the parties?

A I started arbitrating grievances in 1928, and by 1945 arbitration was standard for day-to-day grievances. I am not saying that anybody wants to arbitrate, and I am not saying that arbitration is better than an agreement reached directly by the parties themselves. However, there comes a point where the cost of not using arbitration is excessive.

In principle, I would be against arbitration and would much rather that the parties decide the issues themselves. But what if they cannot decide? You can't simply say that a settlement should be dictated by Government.

Q Would the Government have to do something if employers and unions cannot agree voluntarily?

A I would put it this way: There might be what could be called a "board of public accountability." This board would say to people who cannot settle disputes between them that involve the public interest: "Now, just what is it that divides you and that is so important that you would throw the nation into an emergency? What is so important that you cannot arbitrate the difference and, in preference to arbitration, you force the nation to suffer?"

Q Would that be some sort of public board?

A Yes, a public board. I would not give the board any formal powers. But cases would come to the board. The board would suggest arbitrators—maybe someone of the caliber of Bernard Baruch, Judge Learned Hand, Clinton Golden—individuals of that standing.

The board would say to the parties: "Why wouldn't you submit to these three people the issues that you say you cannot settle? Why is it that you would plunge the country into an emergency rather than risk submitting these issues to a board made up of individuals of the highest standing?"

A procedure of this kind would be democratic so long as the parties themselves specify the issues to be settled and accept the procedure for settling those issues.

"A Loss of Confidence"—

Q Do you feel that something of this sort needs to be done?

A The serious thing that is happening in this country, I feel, is the loss of public confidence in what I call decentralized, private decision making in labor disputes and in price determination as well. There is talk that it might be better to have a system where, before you make a wage increase or a price increase, you would have to appear before a board and justify it.

I would ask: Does this mean that maybe the only way collective bargaining will work in this country is to make it tripartite bargaining, with a built-in fact-finding board?

It seems that the trend may be in that direction unless a way can be found to get unions and employers to accept the same principles of voluntary arbitration for settlement of wage and working-condition disputes that they have accepted for settlement of grievances.

It once was said that arbitration of grievances was impossible. I remember one company coming to me years ago and saying: "What can you tell us about settling grievances within our own plant?" I said: "Look, anything I decide in settling a grievance is going to be better than losing weeks of work."

Q Could something like that work in major disputes?

A I think anybody could come out with something better than we now have. There is much evidence that the public is dissatisfied with the present situation. If we go the way we are going, there is risk that the two-party system of bargaining will be modified, and I think it essential that this basic system be preserved.

Q Is it your feeling that employers and unions should keep that in mind?

A I think that it is in their own self-interest. We have important rights under our democratic system, and they can be preserved only if what people do is politically acceptable. I think maybe we have to add another dimension to the bargaining process.

If the two parties can't get together in a particular dispute, don't they at least have an obligation at that point to say, "Let's bargain on whether we can work out a way to settle this"?

Q Would you ever favor the use of a fact-finding board?

A I would rather the parties face right up to their responsibility without going to a fact-finding board. Suppose they just say to each other: "Look, what do we do in this country when we can't agree across the table? Do we plunge the country into an emergency, or do we both have a public obligation—and a selfish interest—in preserving our freedoms, to work out a plan to arbitrate and settle the difficulty?"

If something like this fails, you run the risk of having the Gov-

ernment step in and impose its own terms of settlement, just as we did during World War II.

Q What is the difference, as you see it, between compulsory arbitration and voluntary arbitration?

A They are two entirely different processes. Voluntary arbitration always remains in the control of the two parties in a dispute. You narrow down, by collective bargaining, the issues in disagreement. Then you agree to submit any remaining issues to arbitration.

If you agree in advance to compulsory arbitration, you are committed to submit to an outsider any issues that may come up sometime in the future—regardless of what those issues are, or how important they are if you agree in advance to arbitrate on such a broad front, you leave too many issues for the arbitrator to decide.

Q Has compulsory arbitration worked in the States where it is used to settle disputes in public utilities?

A I think compulsory arbitration is terrible. I wouldn't suggest it for a minute. If you agree, in advance, to arbitrate whatever people can strike about, you leave too many issues for the arbitrators to settle. There's no inducement for the parties to reach agreement on many of the minor issues that separate them. Need: Better Bargainers—

Q Do you think there's any general demand for compulsory arbitration in the big disputes?

A I don't. And thank goodness there's not. I think people don't want it. But I think they are grieved that bargainers in the big disputes don't do their jobs better.

Q How do you feel about the Taft-Hartley machinery for handling big strikes?

A Everybody knows it's not adequate to handle those strikes. If the Taft-Hartley procedures are meaningful, they should serve the same function as a strike—that is, get people to modify their extreme positions. I don't think they have done that.

Q Then you see the need for a new approach to settling major labor-management disagreements?

A Yes. But I don't think anyone has the full or final answer now. What we need is to throw open this whole question for discussion.

I think you need inventiveness in the social sciences, just as you do in the physical sciences. To my mind, social inventiveness was shown when the idea of arbitrating grievances was developed.

Maybe it is time to be socially inventive in this other direction, trying to find a way to head off strikes when big disputes occur.

[End]

U. S. NEWS & WORLD REPORT

Page 72—Oct. 19, 1959

INTERVIEWS: ANY ANSWER TO STRIKES? "USE COLLECTIVE BARGAINING MORE EFFECTIVELY"

Nathan P. Feinsinger, 57, was chairman of presidential fact-finding boards in the steel and meat-packing strikes of 1946 and 1948. He was a National War Labor Board member during World War II and headed the Wage Stabilization Board during the Korean War. A University of Wisconsin professor of law, he has specialized in labor-relations matters since 1929.

Q Dr. Feinsinger, do you see any alternative to strikes in basic industries?

A I do not see any substitute for strikes, but I see possibilities of diminishing the need to resort to use of the strike weapon.

Q How could that be done? Would you use fact-finding boards?

A I think that, in certain cases, fact-finding boards may be useful. However, I am rather inclined to the view that you should not go beyond attempts to persuade the parties to use such boards. Except as a last resort, I do not think that a fact-finding board with power to make recommendations should be imposed over the objection of either the employer or the union. It is a matter of relative values, and the answer in any particular case would depend upon the degree of national emergency. I think this is a subject that Congress should consider.

Q Would you favor fact-finding if both sides agree to it?

A Yes. I think a fact-finding board is preferable to arbitration.

Q What is the difference?

A Under compulsory arbitration, the parties are required to accept the decision of an arbitration board. The die is pretty well cast. If there is a fact-finding board, agreed to by both parties but without power to impose a settlement, then, if the fact-finding board pulls a boner, the union and employer can straighten it out. Sometimes the parties are smarter than the fact finders.

Incidentally, I have been told recently that Australia, which has put its money on arbitration, is beginning to revise its ideas and to lean toward collective bargaining—with the right to strike—as the lesser of two evils. There has been no actual legislative move to change, but sentiment is changing.

Q Does a Government agency make the actual settlement?

A Yes.

Q Do you feel that this country is tending toward some form of compulsory arbitration, with arbitrators empowered to decide how a strike shall be settled?

A I think that the temper of the country is such that a bill

involving use of compulsion to settle strikes would be well received. I am hoping that leaders in Congress will not take advantage of that sentiment to start us down the road to compulsory arbitration, which then leads to wage and price controls and profit fixing.

Q Would employers object to compulsory arbitration as much as unions?

A I think that, if they could have a limitation on strikes without other consequences, then they certainly would desire it. That partly explains their being in favor of placing unions under antitrust laws. That would have the effect of limiting strikes without carrying with it compulsory arbitration and price and profit fixing. I have a feeling that this view may be an illusion.

Q Is it the theory that antitrust laws applied to unions would weaken them so they couldn't call strikes?

A I think so. It would tend to limit the striking power of unions.

Q Do you think there is a demand for that sort of antitrust legislation?

A That demand has been asserted ever since I can remember—at least as far back as 1935. It has been renewed lately and, of course, some of the provisions of the 1959 Labor Reform Act—such as limitations on picketing and boycotts—are in the direction of putting labor under the antitrust laws.

I don't think anything is to be gained by attempting to cut either employers or unions down to size. The trend in this country and all over the world is toward bigness. The object should be not to prevent bigness but to insure responsibility in the exercise of economic power.

Q Is the Taft-Hartley injunction process a satisfactory solution in national emergencies?

A No. A study of the record shows that, in some cases, the injunction has merely stiffened the resistance of the unions. There is a traditional resistance of labor to the injunction as a strike-breaking device. I know of no case where an injunction, as such, cleared the atmosphere or expedited the settlement of a dispute.

Q Do we continually have to go through strikes in basic industries?

A Well, in a democracy which is based on the concept of individual freedom and free competition, we must expect strife. And the form which strife takes in labor-management relations is the strike or the lockout.

Q Does that mean we must expect, as a routine thing, to have a steel strike, an auto strike or a copper strike every time a contract expires?

A I don't think so. History shows there have been peaceful settlements in those industries. I think what is needed is to find out what the elements are which, in one instance, will produce a peaceful settlement, and, in another instance, will not. Furthermore, I know of many cases where the threat of a strike prevented an actual strike.

Q When there is a strike, does anyone benefit?

A It isn't only the employer who has to weigh the cost of a strike, it's the union, too. Strikes are not popular with the workers unless they have a deep-seated grievance, and even then it's a costly weapon. Presumably, on balance, they feel the cost is worthwhile.

Q Is the feeling growing among workers that strikes are too costly?

A I think some labor leaders are aware of that feeling among their union members, and I think there is a greater reluctance to authorize a strike. But, at the same time, because of that reluctance, I think the preparations for a strike are more careful and the strike is carried on more effectively because of possible destruction of the union if the strike should fail.

We may have fewer strikes as a result of this feeling among the rank and file, and particularly among their wives. But, when strikes do occur, I think they are going to be much more serious and last longer.

U. S. NEWS & WORLD REPORT

Page 74—Oct. 19, 1959

INTERVIEWS: ANY ANSWER TO STRIKES?

. . ."Government should stay out of collective bargaining"

Q Do you see any other ways to settle labor disputes?

A If the Government is going to stay out of collective bargaining—and, in my view, it should stay out—then the parties themselves have to show greater responsibility.

I think there might be conferences between responsible leaders of labor and management—not in a strike or crisis atmosphere, but at other times—to discuss these matters, and try to find out why it is that in one year a settlement is reached without a strike and in another year it isn't.

There is a good deal to be said for President Eisenhower's view that collective bargaining itself is on trial. The problem is to persuade labor and management to use collective bargaining more effectively, not only to provide industrial justice, but to insure industrial peace as well.

"INJUNCTION IS THE WRONG WAY TO SETTLE PROBLEMS"

W. Willard Wirtz, 47, was a War Labor Board member from 1943 to 1945 and its general counsel in 1945. He headed the Wage Stabilization Board in 1946, dealing with postwar problems which included a maritime strike. A former professor of law at Northwestern University, he now is a Chicago attorney, a member of the National Academy of Arbitrators.

Q Mr. Wirtz, are strikes in basic industries really acts of nature that cannot be avoided?

A No, I do not think they are. I suspect that they will always be with us to some extent, but it would be wrong to assume that there is no alternative to a major strike. As relations between the two sides develop and mature, the number of industry-wide strikes is likely to go down rapidly.

Q Is there no alternative to these big strikes where the two sides cannot agree on terms of a contract?

A So far as the two parties are concerned—the employers and union—the only way would seem to be negotiation through normal processes of argument and compromise, and then either agreement or resort to economic force. So far as the parties are concerned, there does not seem to me to be any pat alternative approach.

Q Isn't there a public interest to be considered?

A If there is to be a law to deal with major strikes, I should think that the best form of law would be one that gave the President, or whatever body is named to administer the law, a considerable degree of flexibility in working out procedures devised to take care of the particular dispute, not one general rule, one general procedure, to be applied in all cases.

Q How about use of fact-finding boards with power to make a recommendation?

A I think there is merit in that procedure to deal with some disputes. A public board with power to find facts and then to make recommendations to the parties, but without power to require those recommendations to be accepted, often would be helpful. A fact-finding board without power to recommend—provided in the Taft-Hartley Act—only misleads the public.

Q How about some form of compulsory arbitration in which the arbitrators' findings have to be accepted?

A I should think that would be a last resort, and I am not sure that we should ever have to go that far. If the right procedures could be set up, that could be avoided. I do feel that, if the parties to a major dispute refuse or are unable to come to agreement by any other device, then the Government should be in a

position to require some form of settlement. My feeling is that, if proper alternative procedures were set up, we never would have to get to that point.

Q What is the objection to compulsory arbitration?

A I just do not like the idea of compulsory settlements or Government control of final decisions in general. I am afraid that, if we start down that route, there is no way of knowing where we will stop. Perhaps the next point would be compulsory arbitration of price disputes.

Q Don't some States require arbitration of disputes in public utilities?

A Yes, that is true. There is a serious question concerning their legality. The U. S. Supreme Court has held the law in Wisconsin unconstitutional. The Missouri law is being questioned in court. On my part, I would hope that there might be some further experimentation with this kind of law at the State level to see if there are possibilities in it that we so far have ignored.

Q Isn't the present Taft-Hartley Act enough?

A I think that there are infinitely better ways of representing and reflecting the pubilc interest than the way provided by Taft-Hartley procedures. In fact, I can't think of a worse way than that one.

Q Why? What's wrong with it?

A It seems to me that what Taft-Hartley comes down to is simply a polished-up, embroidered form of relief by court injunction. My feeling is that this is the wrong way to settle these problems—to say to both parties that you must go ahead and work for 80 days under terms laid down by one side. The injunction requires the union to accept terms offered by employers for 80 days, and does nothing more than that.

If the situation is one where all that is important is to stop the strike, Taft-Hartley procedures do that temporarily. But the real question is to get a settlement of the strike issue, and on this the injunction procedure seems to me to hurt, rather than to help.

Q Hasn't fact-finding been followed in the railroad industry? Has it worked?

A The fact-finding approach has been followed in the railroad industry for about 20 years. Whether it has worked is increasingly a question. That method seems now to be subject to abuse. All disputes are going to these boards, and fact-finding seems to be replacing collective bargaining in the railroad industry.

Q Is a strike helpful in any way?

A I think a strike is sheer waste, and I doubt that anybody benefits from it if the alternative to it could have been peaceful settlement on substantially the same terms as those that finally were arrived at through the strike. [End]

[Caption Omitted in Printing]

AFFIDAVIT OF I. W. ABEL

CITY OF WASHINGTON
DISTRICT OF COLUMBIA } ss.

My name is I. W. Abel. I am Secretary Treasurer of the United Steelworkers of America. In that capacity I serve as a member and secretary of the Union's top negotiating committee, authorized to deal with the 4 man committee representing the 12 major steel producing companies in this dispute. In the regular course of my duties, I am charged with the responsibility of keeping the Union records of all negotiating meetings with these companies. I personally attended and have kept the Union's records of the meetings described in this affidavit.

On October 1, 1959, a meeting of the negotiating sub-committee for the Union and for the 12 companies was held in the Penn-Sheraton Hotel in Pittsburgh, Pa. At that meeting the 4 man committee representing the 12 companies submitted to the Union a proposal for settlement of the strike. Under the terms of that proposal, improvements in the pension, insurance and supplemental unemployment benefit programs provided under the expired 1956 agreements were to be made by the companies two months after the date of signing. If the Union had acceded to the companies' proposals on October 1, therefore, the improvements offered by the companies would have been effective December 1, 1959.

The Union did not agree to the companies' proposals for various reasons, among which were the inadequacy, in the Union's view, of the improvements offered and the delay of the effective date beyond the termination date of the prior agreements. The 1956 insurance and pension agreements would expire, by their terms, on October 31, 1959, although they were expressly made subject to renegotiation, with the right to strike, at the same time as the basic labor agreements covering wages and hours of work. The 1956 supplemental unemployment benefits agreements, which originally were to expire on June 30, 1959, at the same time as the basic labor agreements, had expired along with the basic agreements, pursuant to the extension agreements between the parties, on July 14, 1959.

Requiring that the employees of these companies return to work under the terms and conditions of the expired agreements, without requiring that any changes in those terms which may be finally agreed upon shall be retroactive will, therefore, have, at the very least, the effect of depriving the employees of benefits

during at least a portion of the injunction period which were offered to them by the companies on October 1, 1959.

I was also present at a negotiating meeting between the representatives of the 12 major companies and the Union on June 23, 1959. At that meeting the companies presented a proposal to the Union for an indefinite extension, terminable upon 10 days notice, of the agreements which were to expire on June 30. This proposal was rejected by the Union representatives because it did not provide that any improvement in benefits which would be negotiated by the parties during the extension period would be retroactive to the termination date of the prior agreements. On June 27, the Union, in response to a request by the President of the United States did agree to an extension of two weeks of the 1956 Agreements. Formal agreements embodying this extension were executed on June 28. Those agreements were expressly stated to be without prejudice to either party in its position in the negotiations.

On July 11, the representatives of the companies proposed to the Union a further extension of the 1956 agreements, again without any provision for making the new agreements effective as of the date of the termination of the prior agreements. This extension proposal was rejected by the Union, just as the June 23 proposal had been rejected, and the strike began at 12:01 A.M., July 15.

Termination of the strike by an injunction which would not provide for the effective date of any changes to be negotiated in the agreements governing wages, hours, and working conditions, would have the effect of providing for the companies almost exactly what they have demanded from the Union since negotiations began: extension of the agreements without improvement in any of the conditions of employment.

I. W. Abel

SUBSCRIBED AND SWORN TO BEFORE ME

This _____ day of October, 1959

Notary Public

My commission expires 1 November, 1959

[Caption omitted in printing]

AFFIDAVIT OF ROBERT R. NATHAN

CITY OF WASHINGTON
DISTRICT OF COLUMBIA } ss

Robert R. Nathan, being duly sworn, deposes and says:

My name is Robert R. Nathan. I am President of Robert R. Nathan Associates, Inc., a firm of consulting economists. I hold a Bachelor of Science Degree and a Master of Arts degree in economics from the University of Pennsylvania, and a Bachelor of Laws Degree from Georgetown University.

My professional experience as an economist extends over more than 25 years. My work included employment in the United States Department of Commerce as an economist from 1933 to 1936, and as chief of the National Income Division, from 1936 to 1940. During the period of defense mobilization, I was chief of the Requirements Division, Defense Advisory Committee and Office of Production Management from 1940 to 1941, as well as Assistant Director of the Bureau of Research and Statistics, office of Production Management, from 1940 to 1942. My principle responsibilities during the war were as Chairman of the Planning Commission, War Production Board, and as Acting Director for the United States-United Kingdom Combined Production and Resources Board, in 1942 and 1943. In 1945 I was the Deputy Director for Reconversion in the Office of War Mobilization and Reconversion.

Since 1946 I have been an independent consulting economist, in which capacity I have served as consultant for foreign governments, private businesses, and other groups. I am a member and former Vice-President of the American Statistical Association, and a member of the American Economic Association, and the National Planning Association.

I have made a careful and extensive study of the impact of the current steel strike, and of relevant statistical data, to determine whether the continuation of the strike now in effect in the steel industry would imperil the national health or safety, now or in the near future. It is my conclusion that the output available from the approximately 15% of steel capacity now in operation, supplemented by the flow of imports, would be more than ample to meet the requirements of health and safety.

This conclusion is based on the following six analyses, each of which is set forth in detail below:

1. Analysis of the relation between steel production and national health and safety.

2. Analysis of steel usage in 1944 under wartime allocations.

3. Analysis of 1940 steel consumption and projected 1946 steel requirements as estimated in the final report of the Chairman of the War Production Board.

4. Analysis of end-uses of steel in 1947 as revealed by the U.S. Department of Labor's 1947 Interindustry Relations Study.

5. Analysis of 1958 steel shipments reported by the American Iron and Steel Institute.

6. Analysis of recent defense requirements for steel.

THE RELATIONSHIP BETWEEN STEEL PRODUCTION AND NATIONAL HEALTH AND SAFETY

It is clear from the available evidence that only a small portion of our new steel output at any time is required or used for activities directly related to health and safety or even for those activities which indirectly affect health and safety.

To be sure, national health and safety are clearly dependent on the continuous use of a great number and variety of items made of steel. Most of these items, however, are useable and used for 10 or 20 or 30 years, some even longer. The steel on which the national health and safety depend is mainly the steel incorporated in items which form part of the stock of steel products accumulated over many years.

The transportation of people and commodities in the year 1959 is dependent on the volume of automobiles, trucks, airplanes, ships, railroad cars, rail tracks, and the like, that have been produced over the last decade or generation or longer—not upon the steel produced within the year 1959. This is likewise true of durable goods used in homes, or agricultural equipment used on the farms, or power and heating facilities required in the homes and factories and office buildings.

Current production of these items is used to maintain, modernize, and expand the nation's stock of goods. Clearly, a delay of a few months in the expansion and modernization of the nation's stock cannot possibly affect health or safety. When that stock is ample, it is not even of immediate urgency to maintain it at its full level. During the war, for example, we did not produce any automobiles for four years and permitted the nation's stock of automobiles to decline. National health and safety cannot be affected by temporary delay in current production of items which last for many years and of which the nation has a large stock.

During World War II when our nation was relatively fully mobilized for a maximum war effort, the output of new products and even maintenance and repair parts for the civilian economy

was sharply contracted. It was found that the civilian economy could get along on very limited quantities of steel. It was necessary to provide some new steel for food containers, agricultural equipment, and the like and to assure a modest flow of new steel for maintenance and repair activities, but the overwhelming proportion of new steel was assigned to the prosecution of the war.

It should further be noted that the allocations for essential civilian needs during the war had to take account of the probability that the war would last for some time and that the normal replacement of existing facilities and equipment, both consumers' and producers' goods, could not be assured. Thus, generous provision had to be made for the maintenance and repair of the existing stock of facilities and equipment.

In the present situation, it would be highly unrealistic to assume that the parties to the steel dispute will be unable to come to agreement for perhaps a year or two. Protection of the nation's health and safety within the next few months would require only a very minor amount of maintenance and repair because the present stock of products and equipment and facilities made of steel is certainly tremendous. Further, there has been a very high level of industrial production in recent years with the result that inventories of components and finished hard goods are large. Shortages which would endanger the public health and safety surely are neither present nor imminent.

STEEL USAGE IN WORLD WAR II

Data are available which reveal both the allocation and shipments of steel during World War II. The year 1944 was selected as representative of the period when mobilization was most nearly total and when steel diversion from civilian needs was at its maximum. The data used are shipment figures rather than allocations because there was often slippage between what was allocated and what was actually shipped. In fact, allocation usually exceeded shipments in anticipation of some slippage.

Table I, inserted on the following page, presents carbon and alloy steel shipments in 1944 by major agencies which in general reflect categories of usage. It will be noted that the military departments plus the Maritime Commission and exports accounted for over one-half of carbon steel shipments during the year and for over two-thirds of alloy steel shipments.

Particularly revealing is the analysis of the shipments allocated to those wartime organizations which served both military and civilian purposes. A more detailed breakdown of the carbon steel shipments for these programs is shown in Table II. It will be

noted that the War Food Administration, which received some 6 percent of all carbon steel, used about one-third for agricultural machinery. The allocation for the Office of Defense Transportation was partly designed for equipment and various kinds of productive facilities. The Petroleum Administration for War, which received about 2½ percent of total carbon steel shipments in 1944, used most of its steel for productive facilities. About half of the carbon steel shipments to the Office of War Utilities were used for construction and facilities; much of the balance clearly was used for basic equipment and construction.

TABLE 1

Shipments of Steel: Quarterly, 1944
(Thousands of tons)

	Year 1944	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Total Carbon Steel	59,165	15,260	14,805	14,682	14,418
War Department	11,263	2,785	2,679	2,997	2,802
Navy Department	6,454	1,765	1,702	1,608	1,379
Aircraft Resources Control Office	110	142	114	86	68
Maritime Commission	7,841	2,453	1,933	1,708	1,747
Foreign Economic Administration	4,121	1,134	1,122	886	982
Canadian Division	961	215	228	267	251
War Food Administration	3,743	884	996	973	890
Petroleum Administration for War	1,569	383	385	389	412
Office of War Utilities	796	202	236	216	142
Office of Defense Transportation	4,864	1,162	1,283	1,281	1,138
National Housing	61	17	16	14	13
Operations Vice Chairman	11,542	2,897	2,863	2,829	2,953
Other	5,538	1,221	1,248	1,128	1,641
Total Alloy Steel	7,258	1,926	1,831	1,784	1,715
War Department	2,161	535	480	557	588
Navy Department	1,562	451	433	379	295
Aircraft Resources Control Office	858	246	241	203	169
Maritime Commission	50	19	15	9	7
Foreign Economic Administration	220	68	59	63	79
Canadian Division	63	18	15	15	14
War Food Administration	74	22	20	16	15
Petroleum Administration for War	301	76	81	65	79
Office of War Utilities	78	23	22	17	17
Office of Defense Transportation	47	10	14	12	11
National Housing	*	*	*	*	*
Operations Vice Chairman	1,538	389	388	384	378
Other	260	66	64	62	68

* Annual total 82 tons.

Source: War Production In 1944. Report of the Chairman of the War Production Board. June 1945.

TABLE II

Shipments of Carbon Steel to Prime Consumers, Selected Programs, 1944

(Thousands of tons)

	Total	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
War Food Administration	3,743	884	996	973	890
Food Containers	2,396	520	676	687	563
Agricultural machinery	1,202	316	281	305	300
Food products, Distribution, other	23	10	8	4	1
Warehouse	122	38	30	28	26
Office of Defense Transportation	4,863	1,161	1,283	1,281	1,138
Railroad locomotives	160	43	42	42	33
Railroad cars	838	170	222	273	173
Local transportation	36	7	8	10	11
Waterways	33	1	8	10	14
MRO	3,721	919	985	927	890
Warehouse	70	19	17	18	16
Motor transport	3	2	1	1	*
Petroleum Administration for War	1,569	383	385	389	412
"A" products & C&F	1,147	273	291	282	301
Special "B" products	195	46	45	52	52
MRO	61	8	12	18	23
Warehouse	128	28	27	37	36
Hi-Octane Expansion Program	39	28	11	—	—
Office of War Utilities	796	202	236	216	142

U-1	Miscellaneous utilities "B" products	106	31	24	23	28
U-2	Utility C&F	389	102	125	124	38
U-3	Transformers	39	6	16	8	9
U-4	Switchgear	23	6	6	5	6
U-5	Condensers	16	6	5	3	2
U-6	Communication equipment	10	3	2	3	2
U-7	Boilers, pulverizers, etc.	83	15	20	23	25
U-8	Repair parts—power, communication equipment	18	4	5	5	4
U-9	Utility MRO	18	7	11	—	—
	Warehouse	93	22	21	23	27
	National Housing Agency	60	17	16	14	13
	Operations Vice Chairman	11,542	2,897	2,863	2,829	2,953
B-1	Auto accessories and parts	393	89	96	94	114
B-2	Internal Combustion engine	129	33	33	30	33
B-3	Bearings—Babbitted, common	43	10	12	11	10
B-4	Other automotive equipment	258	85	51	56	66
B-5	Bolts, nuts, rivets, etc.	1,272	316	331	325	300
B-6	Building materials electric	176	41	43	43	49
B-7	Other building materials	836	183	195	210	248
B-8	Cranes, drilling machinery	127	32	28	33	34
B-9	Tractors, tractor mounted construction equipment	203	72	53	41	37
G-1	Other construction machinery	127	36	31	29	31
G-2	Consumer durable goods	405	87	99	103	116

* Under 500 tons.
Including F-5.

TABLE II

Shipments of Carbon Steel to Prime Consumers,
Selected Programs, 1944

(Thousands of tons)

		Total	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
G-3	Gas, cylinders	56	16	15	11	14
G-4	Drums, barrels, plugs, etc.	598	155	137	137	169
G-5	Other nonfood containers	515	140	122	121	132
G-6	Electric motors and generators	233	55	61	61	56
G-7	Compressors and pumps	57	15	14	14	14
G-8	Mechanical power trans. equipment	90	23	24	22	21
G-9	Heat exchangers	36	12	8	7	9
J-1	Welding equipment	24	3	6	7	8
J-2	Welding rods and electrodes	339	93	90	78	78
J-3	Electric motor construction, distributor equipment	64	14	15	17	18
J-4	Refrigerator, air condition equipment	105	22	26	28	29
J-5	Other general industrial equipment	472	111	112	121	128
J-6	Safety, technical equipment	48	10	12	13	13
J-7	Mining	127	34	31	30	32
J-8	Plumbing and heating equipment	434	99	106	111	118
J-9	Radio and radar equipment	24	6	6	6	6
K-1	Valves, steel	67	24	18	12	13
K-2	Valves, except steel	3	1	1	1	*
K-3	Pipe fittings	228	67	55	55	51
K-4	Bearings, ball and roller	64	19	17	16	12

K-5	Machine tools and accessories	57	13	13	*16	15
K-6	Tools, metal cutting	13	3	3	3	4
K-7	Other metal working equipment	518	132	135	132	119
K-8	Transportation equipment accessories	214	58	55	54	47
K-9	Transportation rolling stock	11	1	1	1	5
R-2	Rubber products and machinery	37	—	—	20	17
S-2	Manufacturer's repair parts	545	125	133	132	155
S-2	C&F—Hawaii	34	*31	—	—	3
S-4, S-5	Miscellaneous products	592	128	111	167	153
S-6	Special "A" accounts	30	12	8	5	5
S-7	MRO—mines smelters	97	43	54	—	—
S-9	Trucks, trailers, etc.	230	39	58	61	72
	Small case adjoining	—	—	—	—	—
	Warehouse	1,535	366	385	393	391
V-9	Research and experimental	2	—	—	1	1
Z-1	PR-25 products	7	—	—	1	6
	Office of Rubber Director	62	10	22	—	—
	Special "B" products	11	19	22	—	—
	Construction and facilities	*11	11	—	—	—
	Synthetic rubber experimental program	19	19	—	—	—
	Warehouse	9	9	—	—	—

* Under 500 tons.

TABLE 11

Shipments of Carbon Steel to Prime Consumers,
Selected Programs, 1944

(Thousands of tons)

		Total	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
	Other	5,538	1,221	1,248	1,428	1,641
	MRO, general	1,580	1,141	1,059	1,124	1,256
U-9	OWU				22	18
S-7	Mining				56	54
V-3	OCR				37	37
	MRO general (including free steel & misc.)	+			969	1,099
	Small orders	–			41	48
	C&F, general	632	6	156	210	260
	C&F, command	219			94	125
	OCR	58	25	33	–	–
V-1	"B" products, etc.	5	3	2	–	–
V-2	Construction and facilities	2	1	1	–	–
V-3	MRO	2	1	1	–	–
	Warehouse	50	21	29	–	–
	Regional Offices		•	•	–	–
F-3	Aluminum and magnesium experimental program	6	6			
	Steel Division	41	41			

F-1	Carbon steel expansion program	17	17
F-2	Alloy steel expansion program	8	8
	Warehouse	21	21[a]

[a] Under 500 tons

Data on shipments include S-8, MRO for iron and steel producers, in addition to F-1 and F-2. Mail shipments for S-8 and Small orders are included in general MRO figures.

Mill shipments to S-8, MRO for iron and steel producers, and Small orders are included in figures for MRO, Free Steel and Misc., while warehouse shipments for S-8 are in C&E, general.

Source: War Production Board, Controller Division, "Allotments, Orders and Shipments of Controlled Materials", Quarterly reports 1944. See National Archives Document File No. 147-08R

Shipments under the category of Operations Vice Chairman accounted for nearly one-fifth of all carbon steel shipments in 1944. Again an anlysis reveals that this steel was used for machinery, equipment and construction materials as well as maintenance and repairs. There is no way in which these uses can be broken down between equipment for expansion purposes and equipment for maintenance and repair. For instance, more than 10 percent of shipments under the category of Operations Vice Chairman went for bolts, nuts, rivets and the like. Some of these products were ultimately used for new construction and new facilities and some for maintenance and repair. The same is true of other large categories such as electric motors and generators, or miscellaneous general industrial equipment, or the large classification of building material.

The nonmilitary shipments for uses related to health and safety would include food containers, maintenance and repair of transportation and utilities and the like, plus some provision for replacement of highly specialized health and safety equipment. Reviewing the data shown in Table II, one might generously conclude that possibly as much as 15 percent, but more likely 10 percent, of total steel shipments in 1944 were used for purposes related to health and safety. This would indicate shipments of somewhere between 6 and 9 million tons of finished steel products assigned to these categories. In terms of ingot requirements, this would aggregate between about 8 million ingot tons and 12 million ingot tons.

There are two general observations to be made. First, it is impossible to apportion the shipments to categories so specific that they would clearly indicate the exact nature and character of their uses. However, the data which are available in these tables, plus the benefit of personal experience in working with the information during the war days, leads to the conclusion that the above range is certainly a reasonable one and that the upper magnitude would have been more than ample to provide what in 1944 was recognized as needed for health and safety.

Even if the upper limit of 12 million ingot tons is taken as representative of the war-time shipments of steel for health and safety, and if this figure is adjusted for population and living standard changes since 1944, the resulting total would still fall within the capacity of the steel mills currently operating, not to mention the substantial additional supply available from current imports.

It should further be noted that the shipments of steel made available for maintenance and repair were far more generous in 1944 than would be needed today, principally because the end of the war was certainly not in sight and there had been no substantial production of new durable goods in many areas. This necessitated

very intensive efforts to assure that every possible need for maintenance and repair activities would be satisfied. There can be no question that the situation in 1959 is far more favorable.

STEEL DEMAND, 1940 AND 1946

The Chairman of the War Production Board presented his final report on war-time production and the reconversion outlook at the final meeting of the Board on October 9, 1945, and subsequently transmitted the report to the President on November 2, 1945. The report included a table, titled "Tentative Estimates of Steel Demand, 1946" which set forth both the pattern of steel consumption in 1940 and the anticipated pattern of demand for 1946.

It is evident from this table, reproduced here as Table III on the following page, that only a small fraction of total steel output in the year immediately preceding and the year immediately following World War II was required for purposes that can be classified as involving the health or safety, other than defense, of the country.

Of total steel consumption of 49.3 million product tons in 1940, nearly 46 million tons, or 93 percent, was used for producers' and consumers' durable goods, construction, export, petroleum and gas development, direct military uses and inventory accumulation. For the year 1946 it was expected that 54.1 million tons out of a total of 58.6 million tons of steel products, or 92 percent, would be used for these categories.

The remaining uses of steel, comprising consumers' nondurable goods, services, containers, and barrels, kegs, and drums accounted for only 3.4 million tons in 1940 and were projected at only 4.6 million tons for 1946. Even of these categories substantial proportions bear no direct and close relation to health and safety. On the other hand, some very limited part of the requirements for durable goods might be considered essential for health and safety because of maintenance and repair needs. However, over a period of months, certainly the requirements for new durable goods and even requirements for maintenance and repair would be of extremely limited magnitude.

It can certainly be concluded that less than 1 million tons of steel products in 1940 and less than 5 million tons in 1946 could be classed as directly essential to health and safety, excluding defense. The volume of ingots required for these steel products might have been around 5 million tons in 1940 and between 6 and 7 million tons in 1946.

Even taking full account of the growth in population and rising standards of health and general safety since 1940 and 1946, it is abundantly clear that present requirements for health and safety, excluding defense, are less than half of the quantities of steel cur-

rently being produced in operating mills and being imported from abroad.

PATTERN OF STEEL CONSUMPTION IN 1947

The most extensive study of the flow of materials through the economy of the United States ever conducted was "The 1947 Interindustry Relations Study" made by the Division of Interindustry Economics, U.S. Bureau of Labor Statistics. This Division coordinated work done by a number of governmental and private research groups which analyzed in great detail the economic relations between industries in 1947. The work was directed primarily toward improvement of industrial mobilization analysis and was terminated without official publication of a final report. However, reports on various aspects of the study have been made available to the public.

A comprehensive description of the ultimate disposition of iron and steel output, as developed by the Bureau of Labor Statistics, was presented in a table published in the "Review of Economics and Statistics", May 1952, in an article by W. Duané Evans and Marvin Hoffenberg, the co-directors of the study. This table is reproduced here as Table IV.

TABLE III

Tentative Estimates of Steel Demand in 1946

(Thousands of product tons)

Products	1940 Consumption	1946 Demand
I. Producers' durable goods	14,918	22,476
1. Agricultural machinery and farm equipment	1,605	2,828
2. Industrial machinery and equipment	2,007	2,900
3. Machine tools and other metal working machinery	339	435
4. Industrial electrical equipment	721	870
5. Railroad equipment, rails and accessories	4,858	6,090
6. Engines and turbines	399	435
7. Business machinery and equipment	387	653
8. Subsidiary durable equipment	1,984	3,335
9. Commercial motor vehicles	2,618	4,930
II. Consumers' durable goods	7,850	9,896
1. Passenger cars	5,961	7,250
2. Radios and phonographs	17	36
3. Refrigerators	500	1,015
4. Other consumers' durables	1,372	1,595
III. Consumers' nondurables	300	363
IV. Services	70	73
V. Construction	7,892	6,743
VI. Petroleum and gas	2,248	2,538
VII. Containers	2,356	3,263
VIII. Barrels, kegs, and drums	684	870
IX. Exports	8,623	6,888
X. Direct military	985	798
XI. Increase in inventories	3,344	4,713
Total	49,270	58,621

Source: 1940 consumption based on division of Civilian Supply Report, "Allocation of Steel to Civilian End-Products", March 2, 1942. The 1946 demand was derived by translating forecasts of 1946 GNP made by General Economics and Planning Staff. The general method followed was to calculate 1940 ratios of tons of steel to dollar values of GNP categories shown in the table. The corresponding 1946 dollar values were then multiplied by these ratios with price level in the two years assumed to be the same. Estimates for several important items, such as containers, which could not be distributed among GNP categories, represent rough GEPS estimates of the demand for these products. Export demand estimated by the Materials Division. Inventory demand is estimate made by the GEPS.

TABLE IV

Ultimate Disposition of Gross Iron and Steel Output to Final Demand Categories, 1947.
(Dollar amounts in millions)*

Purchasing sector	New and maintenance construction	Net inventory change*	Exports	Government	Gross private investment excluding construction	Households	All final demand* Amount	Percent
1. Agriculture and fisheries	1	(14)	11	5	—	82	85	0.7
2. Food and kindred products	—	4	33	16	—	478	531	4.3
3. Tobacco manufactures	—	1	4	—	—	28	34	0.3
4. Textile mill products	1	(1)	13	1	—	22	37	0.3
5. Apparel	—	1	7	4	—	221	233	1.9
6. Lumber and wood products	70	5	5	—	1	2	84	0.7
7. Furniture and fixtures	18	6	3	5	52	133	218	1.8
8. Paper and allied products	4	(1)	3	1	—	8	15	0.1
9. Printing and publishing	—	(1)	1	3	2	30	36	0.3
10. Chemicals	21	5	26	6	—	64	122	1.0
11. Products of petroleum and coal	12	1	13	3	—	47	77	0.6
12. Rubber products	2	3	6	1	—	24	36	0.3
13. Leather and leather products	—	2	2	1	—	52	57	0.5
14. Stone, clay, and glass products	52	3	6	1	—	10	72	0.6
15. Iron and Steel	1,321	81	912	20	—	—	2,333	18.9
16. Nonferrous metals	15	—	8	—	—	1	24	0.2
17. Plumbing and heating supplies	188	14	9	1	13	85	310	2.5
18. Fabricated structural metal products	631	6	27	2	59	5	733	5.9
19. Other fabricated metal products	237	45	102	11	27	195	620	5.0
20. Agric'l., mining, and constr. machinery	36	33	175	25	508	20	797	6.5
21. Metalworking machinery	—	5	35	2	125	5	170	1.4
22. Other machinery (except electrical)	66	55	193	16	672	210	1,213	9.8
23. Motors and generators	1	7	17	2	26	—	52	0.4
24. Radios	—	1	8	6	21	15	83	0.7
25. Other electrical machinery	76	17	26	8	111	71	310	2.8
26. Motor vehicles	8	93	240	36	701	736	1,811	14.7
27. Other transportation equipment	—	2	65	211	232	33	571	4.6
28. Professional and scientific equipment	1	(1)	10	4	11	33	60	0.5
29. Miscellaneous manufacturing	2	(6)	9	4	25	95	129	1.0
30. Coal, gas, and electric power	1	—	6	4	—	2	13	0.1
31. Railroad transportation	22	2	18	10	8	64	126	1.0
32. Ocean transportation	—	—	30	3	—	2	35	0.3
33. Other transportation	8	1	1	2	1	51	67	0.5
34. Trade	33	2	13	1	30	351	432	3.5
35. Communications	—	—	—	1	—	10	11	0.1
36. Finance and insurance	4	—	1	—	—	74	80	0.6
37. Rental	1	—	—	1	5	130	137	1.1
38. Business services	4	—	—	1	—	5	9	0.1
39. Personal and repair services	30	—	—	3	10	273	317	2.6
40. Medical, educ., and nonprofit org's.	—	—	—	63	—	98	161	1.3
41. Amusements	—	—	2	—	—	40	42	0.3
42. Scrap and miscellaneous industries	—	(172)	6	—	—	—	(166)	(1.3)
43. Undistributed	—	—	—	—	—	—	—	—
44. Eating and drinking places	—	—	—	—	—	182	182	1.5
Totals	2,867	201	2,049	519	2,676	4,023	12,335	
Percent	23.3	1.6	16.6	4.2	21.7	32.6	100.0	

* Figures in parentheses are negative.

It will be noted that the table is in monetary rather than physical terms due to the fact that a study dealing with all types of goods and services could be conducted only in monetary terms. Since there is a wide range of prices for different types and shapes of steel, physical volumes may not correspond precisely with monetary amounts. However, for present purposes the dollar figures are adequate for reflecting the general pattern of steel consumption.

The table divides ultimate uses of steel into six categories. It is clear that an uninterrupted supply of steel for four of these six categories is not essential to the maintenance of health and safety in the short run. These four categories and the proportions of steel ultimately used by them in 1947 are as follows:

Construction	23.3% of total steel supply
Inventory accumulation	1.6%
Exports	16.6%
Private investment, excluding construction	21.7%
Total	63.2%

Of the remaining 36.8 percent of steel supply, 4.2 percent was purchased for purposes ultimately serving the government and 32.6 percent were purchased for purposes ultimately serving household consumers. A large proportion of these purchases can, of course, be postponed without detriment to health or safety. For example, motor vehicles and other transportation equipment accounted for almost one-fourth of all steel required for government and household purposes. Clearly, our stock of transportation equipment is so large that new supply could be cut off for some years without any immediate threat to the nation's health and safety. Indeed, during the war, automobile production was suspended for approximately four years.

Among the quantities of steel ultimately disposed to the government or households, the fairly substantial amounts purchased by the following sectors could certainly be delayed without immediate threat to health and safety:

Purchasing Sector	$ Million
Tobacco manufactures	28
Textile mill products	23
Apparel	225
Furniture and fixtures	138
Printing and publishing	33
Chemicals	70
Rubber products	25

Leather and leather products	53
Agricultural, mining & construction machinery	45
Metal working and other machinery	283
Electrical machinery, incl. radios, motors and generators	132
Motor vehicles	772
Other transportation equipment	274
Trade	355
Finance and insurance	74
Rental	131
Amusements	40
	2,651

These purchasing sectors accounted for $2,651 million or 58.3 percent of the total of $4,544 million ultimately disposed of to government and household use. Since total government and household use amounted to 36.8 percent of all steel, the 58.3 percent of these segments are equal to 21.5 percent of total steel supply. Adding this amount to the 63.2 percent previously found interruptible without immediate threat to health or safety, we find that 84.7 percent of total steel supply could be interrupted without involving such a threat.

It does not follow, however, that all of the remaining 15.3 percent of the steel supply is required to avert such a threat. A number of minor categories have not been excluded and the catch-all category of miscellaneous manufacturing is not excluded from the essential list. Many of the remaining groups include steel for capital goods and expansion as well as current end uses. For example, about 30 percent of the residual partly affected by essentiality, went to the industries producing food and kindred products. While nearly the entire output of these industries in turn went to the household consumers, and while some of these operations require the continued availability of steel either for containers or for repair and maintenance of machinery and tools, the supply of steel used to provide the food industries with new machinery can be postponed without any threat to health and safety. The available data do not permit an estimate of that proportion of the steel supply to the food and kindred products industries which is essential in the short run. It is almost certain, however, that a large amount could be delayed for a year or two and certainly for several more months without causing any threat to health or safety.

The same is true of virtually every one of those steel uses which may at least in part be needed for maintenance of health and safety. The total of these partially essential uses was shown above

to be certainly no more than 15.3 percent of total steel consumption. The really essential portion is an unknown but surely modest fraction of this 15.3 percent. Certainly, less than 10 percent of steel consumption in 1947, when ingot output totalled 85 million tons, was used for purposes related to health and safety. Thus, one can reasonably conclude that the current output from operating steel mills is at least double the maximum of total 1947 steel used for health and safety purposes. This is more than ample to accommodate the increase in requirements due to the rise in population. The flow of imports provides an additional margin.

STEEL SHIPMENTS IN 1958

Analysis of actual shipments of steel products in 1958, as reported by the American Iron & Steel Institute, show that only a very small proportion went for uses that could not be deferred without endangering the health or safety of the population. The breakdown by uses may be summarized as follows:

	Thousands of Product Tons
Construction	8,723
Contractors' Products	3,168
Automotive	10,125
Railroads—Rails, trackwork and equipment	585
Cars and Locomotives	866
Street railways and Rapid Transit	21
Shipbuilding and Marine	798
Aircraft	62
Oil and Gas Drilling	306
Mining, Quarrying, Lumbering	180
Agricultural Machinery	902
Other	291
Machinery, Equipment and Tools	3,181
(of which—food processing equipment)	(49)
Electrical Machinery and Equipment	1,772
Appliances, Utensils and Cutlery	1,590
Other Domestic & Commercial Equipment	1,716
Containers—Sanitary Cans	2,723
Other Cans	2,186
Other	1,659
Ordnance and Other Direct Military	239
Total—Identifiable Domestic Uses	41,392
Steel for Converting and Processing—Net	2,854
Forgings	767
Bolts, nuts, rivets, screws	879
Warehouses & Distributors	10,902
Export—Foreign Countries	2,277
U.S. Possessions	152
Non-Classified	691
Grand Total	59,914

Of the identifiable civilian uses, it is evident that the great bulk went for construction and for the manufacture of machinery, transport and industrial equipment, and consumers' durable goods. Prolonged lack of steel for these uses, while damaging to the economy, clearly holds no significant threat to health or safety. The principal steel-using items that may be regarded as closely related to health or safety are those connected with food and drug production, processing and distribution, and those needed to maintain transport, utilities and essential services and appliances in sound working order.

Obviously these data permit no precise estimates of the quantities of steel required for these purposes, but outside limits can be estimated. On the most generous basis, such limits could include:—

	Thousands of Tons
1. Agricultural requirements that could not be deferred without substantial impairment of food production, certainly not exceeding one-quarter of actual shipments of agricultural steel	300
2. Steel for the food processing industry, at 100 per cent of 1958 shipments	50
3. Containers for food products, principally sanitary cans, at 100 percent of 1958 use for sanitary cans	2,720
Other containers, perhaps	300
4. Drug Manufacturing, at 20 percent of total chemical industry consumption	10
5. Railroad rails, trackwork and equipment at 50 percent of total 1958 shipments	300
6. Maintenance and repair parts for transportation equipment, at 10 percent of total shipments for manufacture of such equipment—not over	180
7. Essential highway maintenance, at 20 percent of total highway shipments	180
8. Maintenance of electric utilities, at 15 percent of total shipments for all electrical machinery and equipment	250
9. Maintenance of domestic appliances, at 10 per cent of total shipments for appliance manufacture	160
10. Automotive maintenance, at most 5 percent of total automotive consumption	500
Total	4,950

This total would be equivalent to about six and a half million tons of steel ingot. Additional allowance must be made for steel used for these purposes that was distributed through warehouses or fabricated by independent producers, for such items as nuts, bolts, screws, hand tools and other hardware needed for required maintenance, as well as for possible other uses that may be regarded as essential to health and safety. The most generous possible estimate of such allowances, however, could not raise the total to more than perhaps ten million ingot tons, or about half the capacity of plants now operating.

Actually, it is clear that the above calculations were made on an excessively liberal basis. Thus, highway safety can be maintained

for a substantial period with insignificant quantities of steel; production of agricultural staples, such as wheat and corn, which are the principal users of agricultural machinery, could be reduced substantially in view of the burdensome surpluses now being raised; automotive equipment can be kept in safe working order with far less than a half million tons of steel, etc. Steel plants now operating can meet all needs for health and safety with a substantial margin. A further margin is provided by imports.

RECENT DEFENSE REQUIREMENTS FOR STEEL.

Data are available by quarters showing shipments from steel mills under rated orders* for the defense program, including requirements of the Atomic Energy Commission. These data, prepared by the Office of Civil and Defense Mobilization, are presented in Table V for the four quarters of 1958 and the first two quarters of 1959, broken down for carbon steel, alloy steel and nickel bearing steel.

In no quarter since the beginning of 1958 have rated mill shipments exceeded 1.2 percent of total mill shipments. For the entire year and a half ending in the middle of 1959, rated shipments accounted for less than one percent of total shipments. An average of about 170,000 tons per quarter were shipped under rated orders in 1958 and the first half of 1959. This represents an annual rate of less than 700,000 tons of steel products and requires an annual output of ingots of no more than one million tons. This quantity is less than five percent of the productive capacity of the steel mills currently in operation.

An analysis by types of steel indicates that in no single quarter since the beginning of 1958 did rated shipments of carbon steel account for more than one percent of total shipments of carbon steel. For alloy steels, the rated shipments varied from 3.6 percent to 8.8 percent of total shipments. For nickel bearing stainless steel, rated shipments varied from 7.7 percent to 10.2 percent in the six quarters reviewed.

Reviewed in the aggregate, the current level of steel output is some twenty times as large as defense requirements. Because of security considerations, detailed data are classified and information

* Shipments under rated orders include all steel incorporated in deliveries for defense purposes, including steel in finished products, components and parts whether processed by prime contractors or subcontractors

TABLE V

Shipments of Steel Products,
Total and Rated Orders for Defense, 1958-59

	Total Shipments	Rated Orders	Ratio of Rated to Total
	All Steel Product (thousands, short tons)		
1st Quarter 1958	14,220	164	1.2%
2nd Quarter 1958	15,002	174	1.2%
3rd Quarter 1958	14,491	180	1.2%
4th Quarter 1958	17,134	154	.9%
1st Quarter 1959	21,112	134	.6%
2nd Quarter 1959	27,651	232	.8%
	Carbon Steel (thousands, short tons)		
1st Quarter 1958	13,434	108	.8
2nd Quarter 1958	14,294	110	.8%
3rd Quarter 1958	13,828	131	.9%
4th Quarter 1958	16,229	104	.6%
1st Quarter 1959	19,922	86	.4%
2nd Quarter 1959	26,123	168	.6%
	Alloy Steel (thousands, short tons)		
1st Quarter 1958	706	47	6.7%
2nd Quarter 1958	624	55	8.8%
3rd Quarter 1958	585	42	7.2%
4th Quarter 1958	814	41	5.0%
1st Quarter 1959	1,080	39	3.6%
2nd Quarter 1959	1,385	53	3.9%
	Nickel Bearing Stainless Steel (thousands, pounds)		
1st Quarter 1958	159,834	15,634	9.8%
2nd Quarter 1958	166,746	16,796	10.1%
3rd Quarter 1958	156,020	15,172	9.7%
4th Quarter 1958	182,990	18,624	10.2%
1st Quarter 1959	218,486	18,438	8.4%
2nd Quarter 1959	287,302	22,050	7.7%

Source: Office of Civil and Defense Mobilization

is not available with respect to production of nor defense needs for specialized steel. Some of these specialized products may not be produced in the mills now operating. However, they could certainly be produced in a very small number of mills which might be re-opened to assure the availability of such special items.

Short of these very special situations, there is no question whatsoever but that the capacity of presently operating mills is more than adequate to meet the needs of the defense program plus the essential requirements for public health and non-military safety. Again it should be noted that an additional margin is provided for substantial imports.

ROBERT R. NATHAN

SUBSCRIBED AND SWORN TO BEFORE ME

this day of October, 1959.

Notary Public

My commission expires

[Title omitted in printing]

AFFIDAVIT OF LEON H. KEYSERLING

CITY OF WASHINGTON
DISTRICT OF COLUMBIA } ss

Leon H. Keyserling, being duly sworn, deposes and says:

My name is Leon H. Keyserling. I am a consulting economist and an attorney. I hold an A.B. Degree from Columbia University, and an LL.B. Degree from Harvard University.

I was one of the draftsmen of the Employment Act of 1946, and I served with the Council of Economic Advisers as Vice-Chairman from 1946 to 1950, and as Chairman from 1950 to 1953. Prior to 1946 I served as Deputy Administrator and General Counsel of the United States Housing Authority from 1938 to 1942, and as General Counsel of the National Housing Agency from 1942 to 1946. I have been a consultant to Senate committees on legislation relating to banking and currency, industrial recovery and public works, housing, social security, labor relations, and employment. I am President of the Conference on Economic Progress, and I have been the author of many articles and studies concerning full employment, economic stability, and related subjects.

As one of the draftsmen of the Employment Act of 1946, and as Vice-Chairman and later as Chairman of the Council of Economic Advisors created thereunder, I gained a thorough familiarity with the American economy as it affects employment, production, and purchasing power.

The Employment Act of 1946, as amended, declares in Section 2 that "It is the continuing policy and responsibility of the Federal Government to use all practicable means consistent with its needs and obligations and other essential considerations of national policy . . . for the purpose of creating and maintaining . . . conditions under which there will be afforded useful employment opportunities, including self-employment, for those able, willing, and seeking to work, and to promote maximum employment, production, and purchasing power."

Section 3 of the Act requires that the President transmit to the Congress at the beginning of each regular session an Economic Report containing *(inter alia)* a program for carrying out the policy declared in Section 2; and also authorizes the President to transmit to the Congress from time to time such supplementary or revised recommendations and such reports supplementary to the Economic Report "as he may deem necessary or desirable to achieve the policy declared in Section 2."

Since 1953, I have been engaged continuously in economic studies defining "maximum employment, production, and purchasing power" as envisaged in the Employment Act of 1946, measuring the extent to which the United States economy has achieved or fallen short of these objectives, and analyzing also what policies and changes in policies within the purview of the Act would effectuate its purposes.

I have compared the economic effect of the general recession which occured in 1958 with the economic effect of the 1959 steel strike, and I have concluded that even if the steel stoppage were to continue for some additional time, its impact upon the economy would still be far less than that of the recession. I base this conclusion on the facts set forth in the balance of this affidavit.

In 1958 as a whole, the gross national product, which is the accepted common measurement of the performance of the United States economy as a whole, was about 60 billion dollars short of maximum production.

Correspondingly, the United States economy in 1958 as a whole fell far short of maximum employment. For 1958 as a whole, unemployment as customarily measured by the Census Bureau was 4.7 million, coming to 6.8 percent of the civilian labor force. The true level of unemployment, taking into account also the fulltime equivalent of part-time employment, was almost 6.2 million for 1958 as a whole, coming to 9 percent of the civilian labor force. These figures, contrasted with maximum employment, indicate that for 1958 as a whole unemployment as measured by the Census Bureau was 2.7 million higher than the level of unemployment consistent with maximum employment, while the true level of unemployment was about 3⅓ million higher than the level of true unemployment consistent with maximum employment.

The foregoing data are all based upon official Government figures, insofar as the actual levels of production, employment, and purchasing power during 1958 are concerned. The departures from maximum production, employment, and purchasing power are necessarily based upon my own studies, which define the needed level of production, employment, and purchasing power consistent with maximum production, employment and purchasing power in accord with the purposes of the Employment Act of 1946.

However, even using only the Government data on actual levels of activity, the situation in 1958 may be illustrated in various ways. Measured in uniform 1958 dollars, the annual rate of gross national production fell from 453.4 billion dollars in the second quarter of 1957 to 435 billion in the second quarter of 1958. The amount of unemployment, as measured by the Census Bureau, rose from 2,690,000 in April 1957 to 5,120,000 in April 1958. The true level of un-

employment rose from 3,748,000 in April 1957 to 6,777,000 in April 1958, coming at the latter date to almost 10 percent of the entire civilian labor force.

In the face of these conditions, the national Administration recommended no large measures to restore maximum production, employment, and purchasing power. The President sent to the Congress no supplementary Economic Report, as provided for under Section 3 of the Employment Act of 1946, after his required Economic Report at the beginning of 1958.

The Administration did not regard these conditions as sufficient to call forth an affirmative program to restore maximum production, employment and purchasing power.

In the third quarter of 1959, despite the steel strike, the Gross National Product measured in 1958 dollars was running at an estimated annual rate of about 480 billion dollars, compared with an annual rate of 478 billion in the second quarter of 1959 before the steel strike. In the third quarter of 1959, unemployment as measured by the Census Bureau, adjusted for seasonal factors, was about 3.7 million, and the true level of unemployment was about 4.9 million, contrasted with about 3½ and 4.6 million, respectively, in the second quarter of 1959, also adjusted for seasonal factors. Thus, the steel strike has not caused any deterioration comparable to that caused by the recession last year.

It is also significant to compare the third quarter of 1959, despite the steel strike, with the second quarter of 1958, the low point of the recent recession. Measured in 1958 dollars, the annual rate of the Gross National Product rose from 435 billion dollars in the second quarter of 1958 to about 480 billion in the third quarter of 1959. Census Bureau Unemployment in August 1959 was 3.8 million, and the true level of unemployment was about 5.2 million, contrasted with figures of 5.2 million and 6.8 million, respectively, in April 1958, all seasonally adjusted—the figures on unemployment for April 1958 given above were not seasonally adjusted, since they were compared with the same month in 1957. The annual rate of the deficit in gross national production was 64 billion dollars in the second quarter of 1958, and about 44 billion dollars in the third quarter of 1959, measured in uniform 1958 dollars. These figures show that the economic situation now, despite the steel strike, is not nearly so bad as in the second quarter of 1958.

Beyond this, it is not possible to estimate with any degree of accuracy as to the effect of the steel strike upon the national economy, except to say that the figures for the third quarter of 1959 over-estimate this effect, because the prospect of the strike led to a higher rate of steel production and sales immediately before the strike than there would otherwise have been; and, when the strike

is over, the rate of production and sales will be higher than if the strike had not taken place.

Nevertheless, the difference between the two respective impacts of the 1958 recession and the current steel strike is so huge that, clearly, even if the steel stoppage were to continue for some additional time, its impact upon the economy would still be far less than that of the recession.

Leon H. Keyserling

SUBSCRIBED AND SWORN TO BEFORE ME
this —— day of October, 1959.

Notary Public

My commission expires 1 November, 1959

[Title omitted in printing]

AFFIDAVIT

OF

MEYER BERNSTEIN

CITY OF WASHINGTON
DISTRICT OF COLUMBIA } ss

Meyer Bernstein, being duly sworn, deposes and says:

I.

My name is Meyer Bernstein; I am an economist and the International Affairs Representative for the United Steelworkers of America.

I hold an A.B. degree in economics from Cornell University, and have been on the staff of the United Steelworkers of America, or, as it was originally known, the Steel Workers Organizing Committee, since 1936. During most of this period, I have been a Research Associate, with primary responsibility to study the economics of the iron and steel industry. I have made numerous studies of cost, financial and production problems in the industry, and during a part of the Korean War, I represented the United Steelworkers of America in Wage Stabilization Board matters. I have often taken part in negotiations of collective-bargaining agreements in the steel industry, and have contributed to the economic research upon which the union based its negotiations.

From 1950 to 1952, I was on loan to the State Department as Labor Observer in the coal and steel area of the Ruhr. During that period, I devoted much time working with such Occupation agencies as the Ruhr Authority, the Steel and Coal Control Boards, the Steel Trustee Association, and the management groups of the 25 decartelized steel units.

From 1953 to 1955, I represented the Steelworkers Union at Luxembourg, where I established a liaison office with the unions participating in the European Coal and Steel Community, commonly known as the Schuman Plan. I also cooperated in joint studies of technical, production, and labor problems with the High Authority of the ECSC.

From late 1955 to late 1956, I served as Assistant to the President of the International Metalworkers' Federation. In that capacity, I made a study of the finances, productive capacity, labor costs, and related matters of the steel industries of the participating organizations, which was entitled "The 100 Largest Steel Com-

panies of the Free World". This study has been circulated by the International Metalworkers' Federation, Geneva, Switzerland. I also represented the IMF at the meetings of the Economic Commission for Europe, Steel Committee, and have cooperated with it in numerous studies.

I have participated, either as advisor or delegate, in many international labor and economic meetings, including the Steel Industry Committee of the International Labour Organization, several other ILO conferences, and congresses of the International Confederation of Free Trade Unions, as well as conferences and congresses of the International Metalworkers' Federation.

II.

I have made a survey to determine the amount of steel capacity which is currently in operation at companies not affected by the steel strike. In connection with this survey, I have examined the records of collective bargaining agreements and their extensions on file at the Union's headquarters in Pittsburgh, and have checked with the industry press, including the publications *Iron Age*, *Steel*, and *American Metal Market*. I have also checked the 1959 report on steelmaking capacity issued by the American Iron and Steel Institute.

This survey shows that, as of October 16, 1959, the following companies with the indicated location and ingot capacity were in operation:

STEEL MILLS STILL IN OPERATION

Company	*Location*	*Ingot Capacity (tons)*
ALABAMA		
Killby Steel Co.	Anniston	31,020
Porter, H. K., Co., Inc.		
Connors Steel Div.	Birmingham	115,000
Southern Electric Steel Co.	Birmingham	66,000
ARIZONA		
Yuba Consolidated Industries, Inc.		
Western Rolling Mills Div.	Helena	60,000
CALIFORNIA		
Alco Steel Corp.	Torrance	50,000
Pacific States Steel Corp.	Niles	216,000
Southwest Steel Rolling Mills, Inc.	Los Angeles	15,000

STEEL MILLS STILL IN OPERATION (Cont'd.)

Company	*Location*	*Ingot Capacity (tons)*
CONNECTICUT		
Carpenter Steel Co.		
Carpenter Steel of New England, Inc.	Bridgeport	84,000
FLORIDA		
Florida Steel Corp.	Tampa	13,000
GEORGIA		
Atlantic Steel Co.	Atlanta	100,000
ILLINOIS		
Columbia Tool Steel Co.	Chicago Hts.	6,600
Finkl, A., & Sons Co.	Chicago	33,600
Granite City Steel Co.	Granite City	1,110,000
International Harvester Co.		
Wisconsin Steel Works	S. Chicago	1,200,000
Keystone Steel and Wire Co.	Peoria	175,000
Laclede Steel Co.	Alton	600,000
INDIANA		
Borg-Warner Corp.		
Ingersoll Steel Div.	New Castle	61,000
Continental Steel Corp.	Kokomo	120,000
Joslyn Mfg. & Supply Co.	Ft. Wayne	37,500
KENTUCKY		
Jessop Steel Co.		
Green River Steel Corp.	Owensboro	185,100
MARYLAND		
Eastern Stainless Steel	Baltimore	80,000
MICHIGAN		
Allegheny Ludlum Steel Corp.	Ferndale	3,000
Ford Motor Co.	Dearborn	1,898,600
MISSISSIPPI		
Mississippi Steel Corp.	Flowood	15,000
NEW YORK		
Simonds Saw & Steel Co.	Lockport	21,600
Wickwire Bros., Inc.	Cortland	32,100

STEEL MILLS STILL IN OPERATION (Cont'd.)

Company	Location	Ingot Capacity (tons)
OHIO		
American Compressed Steel Corp.	Cincinnati	21,600
Armco Steel Corp.	Middletown	2,557,000
Berkman, Louis, Co.		
Ohio River Steel Div.	Toronto	136,080
Copperweld Steel Co.	Warren	660,000
Detroit Steel Co.	Portsmouth	1,500,000
Republic Industrial Corp.		
Industrial Forge & Steel, Inc.	Canton	84,000
Timken Roller Bearing Co.	Canton	700,000
Universal Cyclops Steel Corp.		
Empire-Reeves Steel Corp.	Mansfield	500,000
OREGON		
Gilmore Steel & Supply Co., Inc.		
Oregon Steel Mills	Portland	150,000
PENNSYLVANIA		
Alan Wood Steel Co.	Conshohocken	800,000
Alco Products, Inc.	Latrobe	108,650
Armco Steel Corp.	Butler	557,000
Baldwin-Lima-Hamilton Corp.		
Standard Steel Works Div.	Burnham	188,710
Carpenter Steel Co.	Reading	87,500
Continental Copper & Steel Industries, Inc.		
Braeburn Alloy Steel Div.	Braeburn	20,750
Edgewater Steel Co.	Oakmont	117,600
Erie Forge & Steel Corp.	Erie	284,000
Erie Sterling Steel Corp.	McKeesport	20,040
General Tire & Rubber Co.		
Byers, A.M., Co.	Ambridge	90,000
Hunco Corp.	Harrisburg	100,750
Harrisburg Steel Co. Div.		
Heppenstall Co.	Pittsburgh	55,550
Midvale-Heppenstall Co.	Philadelphia	157,700
Essop Steel Co.	Washington	35,800
Latrobe Steel Co.	Latrobe	24,000
Lukens Chapman & Scott Corp.		
Milton Steel Div.	Milton	90,000
Lyon Machine Co.	New Castle	96,000
	W. Homestead	105,000

STEEL MILLS STILL IN OPERATION (Cont'd.)

Company	Location	Ingot Capacity (tons)
National Forge & Ordnance Co.	Irvine	25,000
Pennoyd Steel & Forge Corp.	Philadelphia	15,600
Phoenix Steel Corp.		
Phoenix Steel Tube & Structural Div.	Phoenixville	360,000
Phoenix Steel Plate Div.	Harrisburg	186,760
Union Electric Steel Corp.	Carnegie	25,000
Universal Cyclops Steel Corp.	Bridgeville	77,110
Vanadium-Alloys Steel Co.	Latrobe	12,000
Colonial Steel Co. Div.	Monaca	30,000
RHODE ISLAND		
Washburn Wire Co.	Phillipsdale	93,000
TENNESSEE		
Knoxville Iron Co.	Knoxville	38,000
TEXAS		
Cabot, Godfrey L., Inc.	Pampa	16,200
Cameron Iron Works, Inc.	Houston	58,800
LeTourneau, R.G., Inc.	Longview	90,000
Lone Star Steel Co.	Lone Star (Daingerfield)	800,000
Texas Steel Co.	Ft. Worth	132,450
VIRGINIA		
Newport News Shipbuilding & Dry Dock Co.	Newport News	15,000
Roanoke Electric Steel Corp.	Roanoke	25,000
WASHINGTON		
Isaacson Iron Works, Inc.	Seattle	102,000
WEST VIRGINIA		
National Steel Corp.		
Weirton Steel Div.	Weirton	3,300,000
Porter, H. K., Co., Inc.	Huntington	110,000
TOTAL		22,683,180

or 15.36% of total capacity

I have examined the *Annual Statistical Report* of the American Iron and Steel Institute for the year 1958 and find on Page 53 thereof the following statistics dealing with steel capacity and production for the years 1932 to 1958. I have also examined the weekly and monthly reports of the American Iron and Steel Institute on production of steel ingots and ingots for castings, to obtain comparable figures for the first nine months of 1959.

INGOTS AND STEEL FOR CASTINGS: CAPACITY AND PRODUCTION, YEARS 1932 AND 1933, AND 1938 THROUGH 1959.

Years	Capacity	Production
		(Net Tons)
1932	76,897,527	15,123,477
1933	76,766,509	25,721,643
1938	80,185,638	31,751,990
1939	81,828,958	52,798,711
1940	81,619,496	66,982,686
1941	85,158,150*	82,839,259
1942	88,886,550*	86,031,931
1943	90,589,190*	88,836,512
1944	93,851,420*	89,611,600
1945	95,505,280	79,701,648
1946	91,890,560	66,602,721
1947	91,211,250	84,891,071
1948	91,233,460	88,640,170
1949	96,120,930	77,978,176
1950	99,982,650*	96,836,075
1951	101,229,650	105,199,848
1952	108,587,670	93,168,039
1953	117,547,470	111,609,719
1954	121,330,110	88,311,652
1955	125,828,310	117,036,085
1956	128,363,090	115,216,119
1957	133,159,150	112,711,996
1958	110,742,570	85,254,885
1959	117,633,670	(1st 9 months)
		72,179,609

*Average annual capacity as of January 1 and July 1.

I have further examined monthly production reports of the American Iron and Steel Institute, which show the following production for the months indicated:

INGOTS AND STEEL FOR CASTINGS

Net Tons

Date		Production
December	1957	1,685,000
January	1958	1,985,000
February	1958	1,913,000
March	1958	2,291,000
April	1958	2,196,000
May	1958	2,061,000
June	1958	1,869,000
August	1959	1,138,000
September	1959	1,555,000

19

I have examined the releases and publications of the American Iron and Steel Institute dealing with imports and exports of steel products. I find that the Institute keeps a regular record of statistics on the subject, which it releases monthly, and that in addition it has published a special brochure entitled "Foreign Trade Trends Iron and Steel — 1959 edition." From these sources and the sources described in Paragraphs 2 and 3 above, I have compiled the following tables. These tables show that steel products have been imported from abroad in continually increasing quantities. On the basis of my knowledge of the international steel market, it is my opinion that steel imports will probably drop somewhat in the last four months of 1959 but average monthly steel imports can be expected to remain at or above 900,000 tons.

The tables mentioned in the foregoing paragraph are on the following pages.

STEEL MILL PRODUCTS—NET TONS

Date	Imports	Domestic Production	Exports	Percentage Imports to Total U.S. Supply
July 1959	429,651	8,151,267	157,390	5.0
June	310,905	9,700,156	191,355	3.1
May	381,787	8,751,119	165,856	4.3
April	550,150	8,602,526	178,029	6.0
March	287,417	8,117,088	177,901	3.5
Feb.	240,769	6,521,374	167,586	3.7
Jan.	229,360	6,180,168	164,357	3.7
1st 6 Months	1,911,729	48,456,396	1,001,102	3.9
1958	1,702,819	50,911,854	2,082,315	3.0
1957	1,452,559	85,880,801	3,173,148	1.7
1956	1,331,168	80,284,042	4,156,747	1.6
1955	970,022	90,657,553	3,870,889	1.1
1954	713,657	68,304,040	2,659,017	1.2
1953	1,070,141	83,010,724	2,907,078	1.3
1952	1,185,255	71,108,528	2,918,097	1.7
1951	2,171,141	87,011,320	4,051,211	2.5
1950	913,000	75,190,581	2,638,000	1.2
1949	291,312	60,882,387	1,611,111	0.5
1948	843,171	80,491,052	3,000,000	1.0
1947 to 1st Quarter	575,000			0.7
1946	161,000			less
1945	458,540	79,062,555	2,402,920	0.6
1944	718,110	74,568,951	1,790,653	0.9
1943	281,210	81,178,100	2,714,790	0.3
1942	268,810	82,222,511	1,255,720	0.3
1941	202,970	79,810,298	920,690	0.3
1940	102,791	61,215,812	993,028	0.2
1939	423,280	48,714,296	968,512	0.9

STEEL MILL PRODUCTS IMPORTS
(Net Tons)

Steel Mill Products	July 1959	First 6 Months 1959
Ingots, blooms, slabs and billets, etc.	5,009	19,962
Wire Rods	50,081	206,016
Concrete reinforcing bars	87,155	189,678
Bars -other, carbon	19,572	93,383
Bars -other, alloy	258	1,044
Hollow bars and drill steel	86	688
Skelp		180
Plates	38,807	80,763
Sheets and strip -hot and cold rolled	21,561	69,071
Tin and terne plate (incl. tin mill black plate)	2,651	1,051
Structural shapes, plain 3" and over	52,475	221,611
Structural shapes, plain under 3"	25,820	129,859
Sheet piling	1,798	2,580
Rails and track accessories	832	1,130
Wheels and axles	54	250
Steel pipe and tubing	54,951	220,268
Barbed wire	7,251	39,383
Round wire and steel wire	22,680	119,115
Flat wire and strip, not over 8" wide	1,165	28,313
Galvanized fencing wire, galvanized wire fencing (wire 8, 100" dia. and larger)	5,135	38,852
Wire nails	29,307	112,297
TOTAL	249,651	1911,797

V

Appendix A, which is attached to this Affidavit and is made a part hereof, consists of true photostats of releases of the Business and Defense Services Administration, United States Department of Commerce, issued July 20 and 28, 1959, respectively, which I have obtained directly from the BDSA. These releases describe the actions which BDSA has taken to assure that defense and atomic energy requirements for steel are met during the strike.

VI

Appendix B, which is attached to this Affidavit and is made a part hereof, is a photocopy of an article appearing in the Friday, October 2, 1959, issue of the trade publication, *American Metal Market*, entitled "Defense Steel Moving Out of Struck Plants." This article describes the informal arrangements which have been made

between local officials of the United Steelworkers Union and representatives of several Government agencies concerned with national defense and atomic energy, to permit the movement of steel products necessary for these programs, despite the strike.

VII

Appendix C, which is attached to this Affidavit and made a part hereof, consists of an exchange of letters between President David J. McDonald of the United Steelworkers of America, and Rear Admiral R. L. Swart, United States Navy, Vice Chief of Naval Material, which pertains to the union's cooperation in releasing from the struck Lukens Steel Company plant at Coatesville, Pennsylvania, material essential to certain top priority defense programs. The letter of David J. McDonald describes the union's policy "to cooperate fully with the Government in removing steel products from steel mills on strike when required for defense purposes."

VIII

I have made a survey to determine the present and anticipated effects of the current steel strike on employment and unemployment throughout the economy, in order to ascertain the degree to which the rest of the economy has been affected by the strike. This survey has been based exclusively on official documents prepared by the United States Department of Labor, and official statements made by Seymour Wolfbein, Deputy Assistant Secretary of Labor, as reported on Page 32 of the October 11, 1959 issue of the *New York Times*, the accuracy of which report I have personally verified with Mr. Wolfbein.

The documents which I have consulted are the following:

Bureau of Labor Statistics, United States Department of Labor, *Monthly Report on the Labor Force* issued October 13, 1959.

Bureau of Employment Security, Office of Program Review and Analysis, United States Department of Labor, *First, Second, Third, Fourth and Fifth Reports on Impact of Steel Stoppage on Employment in Selected Areas.*

The first four of these reports were issued on August 17, August 30, September 13, and September 27, 1959, respectively. The fifth was made available to me by the Department of Labor, although it has not yet been released. It brings this series of reports up to date as of September 30, 1959.)

From these sources, I have learned that as of September 30, 1959 the impact of the steel strike is still largely confined to the steel producing areas.

The fifth report of the Bureau of Employment Security showed that in the 31 areas surveyed, there was a total of 104,600 workers laid off as a result of the steel strike. Of these, 85,900 were in steel-producing areas, and 18,700 were in steel-consuming areas. The Bureau estimated that for the nation as a whole, the total of strike-induced layoffs as of September 30 was 195,000.

The Bureau of Labor Statistics reports unemployment for September at a total of 3,230,000, which is a decrease of 196,000 from the August figure. At the time these figures were released, Mr. Wollbein estimated that total unemployment induced by the steel strike had climbed to 225,000 in the week ending October 7. He also estimated that total unemployment in October would be slightly more than 3,000,000. Finally, Mr. Wollbein stated that unemployment caused by the strike was increasing at a rate of 25,000 per week, and that this rate would shortly increase to 50,000 per week.

On the basis of these figures, it is clear that the steel strike has not caused and in the near future is not likely to cause unemployment of the magnitude reached, for example, in the summer of 1958 when, according to the January 1959 report on *Economic Indicators* prepared for the Joint Economic Committee by the Council of Economic Advisors, table on "Employment, Unemployment, and Wages", Page 11, as many as 5,137,000 workers were unemployed.

MEYER BERNSTEIN

SUBSCRIBED AND SWORN TO BEFORE ME
this — day of October, 1959

Notary Public

My commission expires 1 November 1959

Appendix A

to Affidavit of Meyer Bernstein

BDSA to Keep Close Check on Steel

Measures are being taken to keep a close check on the status of steel supplies for defense purposes, in view of the steel strike, H. B. McCoy, Administrator, Business and Defense Services Administration, U.S. Department of Commerce, announced today after a meeting of BDSA officials with representatives of the steel distributing industry.

The distributors are the suppliers between producer and consumer.

BDSA is taking three principal steps to keep watch on the supply situation:

The BDSA Iron and Steel Division will continue to keep up-to-date information on the output of steel mills still operating.

BDSA will obtain weekly reports reflecting the supply situation in steel warehouses.

BDSA is asking the Bureau of the Census to provide it with special periodic reports on steel imports.

If the strike continues, a later meeting will be held to discuss additional measures that might be needed. In any case, BDSA is prepared to provide the necessary directive or other assistance to insure the availability of steel for selected high urgency Department of Defense or Atomic Energy Commission programs.

The discussion today also covered the impending revision of the Defense Materials System regulations—under consideration for several months—and the changes which would follow in the steel order of DMS.

Industry representatives at today's meeting were:

Richmond Lewis, Charles C. Lewis Co., Springfield, Mass.; John H. Morava, U. S. Steel Supply Division, U. S. Steel Corp., Chicago, Ill.; James Hudson, Grammer, Dempsey and Hudson, Inc., Newark, N. J.; Charles L. Hardy, Jos. T. Ryerson and Son, Inc., Chicago, Ill.; C. L. Stewart, Jones and Laughlin Steel Warehouse Division, Indianapolis, Ind.; Robert G. Welch, American Steel Warehouse Assn., Inc., Cleveland, Ohio.

BDSA Moves to Aid Defense Steel Shipments

The Business and Defense Services Administration, U.S. Department of Commerce, announced today that two moves had been made in an effort to insure that available steel supplies will be channelled to defense purposes as needed.

A letter signed by H. B. McCoy, BDSA Administrator, went to the 110 steel companies still operating, reminding them "of the

obligations of your company under the Defense Materials System, which requires preferential treatment in filling orders for controlled materials for Department of Defense and Atomic Energy Commission programs, under the authority of the Defense Production Act of 1950."

At the same time, a telegram went to 98 companies handling defense orders asking for a weekly report on acceptance of authorized controlled material orders. Immediate reports on any work stoppages also were called for in this telegram.

The letter sent to the steel companies by Mr. McCoy recalled that BDSA has responsibility for administration of the Defense Materials System "which sets forth the rules for the preferential treatment of defense orders, including production and construction in connection with missiles, satellite programs, and other defense and atomic energy procurement."

It added:

"It is obvious that if there is a greatly prolonged work stoppage affecting a major portion of the steel industry, the mills which continue to operate would take on added importance as a factor in maintaining the continuity of essential military and atomic energy programs."

Accompanying the letter were copies of DMS Regulation 1, "Basic Rules of the Defense Materials System," and BDSA Order M-1A (Iron and Steel) currently applicable to the steel industry.

"Undoubtedly, the proper persons in your company are already familiar with the provisions of these documents," Mr. McCoy wrote. "However, in view of the current situation, it seems only prudent that we make double sure of this."

The telegram to the companies already handling defense orders asked for a report on "the tonnage accepted by your company for each of the months of September, October and November of each product on your current production directive."

The last report was to include acceptances up to July 21. Subsequent reports will cover the situation at the close of business each Friday, and will be due on the following Monday.

The steps announced today are in addition to the weekly reports which BDSA will obtain concerning steel warehouse stocks.

Appendix B to Affidavit of Meyer Bernstein

DEFENSE STEEL MOVING OUT OF STRUCK PLANTS

By Blaine McKee
American Metal Market Staff Reporter

CHICAGO—Some highly specialized steel needed for defense purposes is moving out of struck mills and service centers.

Finished but unshipped high alloy and stainless in mills and warehouses closed down on July 15th has been finding its way to important projects for the Defense Department and the Atomic Energy Commission with the tacit consent of the United Steel Workers, at least on the local level.

Confirmation of the practice, which has not been unusual in past strikes, came yesterday from several sources, including the American Steel Warehouse Association, although spokesmen for the U.S.W. maintained that there has been no change in the policy expressed publicly on several occasions by David J. McDonald, U.S.W. president, that, generally, no steel will be moved.

Carl W. Messinger, director of the Bureau of Business and Defense Services Administration, said that an increasing number of requests for help in locating needed steel items is being received from firms engaged in defense or atomic energy work and that in many cases the Bureau's Iron and Steel Division is able to come up with the material.

Obvious Source

The obvious source is at the few scattered mills specializing in alloy steel that remain open because of extended contracts but, in some cases, the steel has been obtained from behind picketed gates.

"Defense efforts have not suffered because of lack of steel as far as we have been able to determine," asserts Robert G. Welch, executive secretary of the A.S.W.A. "Steel service centers and operating mills have gone to extraordinary efforts to take care of defense needs. In some cases it has been necessary to go to a struck service center for steel and, in most cases, there has been excellent cooperation by the local unions which have worked out procedures to release the steel for emergency needs."

Those procedures in most cases involve use of members of the struck plant's union local. The steelworkers, themselves, find the work a boon, usually receiving a half day's pay for less than an hour's work.

Pass Own Pickets

One instance this week saw union men passing through their own picket lines at a warehouse to get out several wide stainless plates. The plates, 110 inches wide by three-eighths of an inch thick, were urgently needed for an Atomic Energy Commission project.

Their action was at odds with the definite "no" voiced by Mr. McDonald when he received a request for permission to open up a mill last August. He repeated his stand a few days later when reporters pressed the issue at Unity House, Pa., during a session of the A.F.L.-C.I.O. executive committee.

Privately, however, union officials have left the question up to individual locals. Their purported view is that the administration will find less ground for invocation of the Taft-Hartley Act if defense needs are being satisfied.

Would Reopen Mill

According to one union man, Mr. McDonald would even go so far as to allow the reopening of a particular mill if government needs required its output.

At any rate, BDSA officials have found no occasion to go as far up the chain of command as Mr. McDonald to have their requests granted.

"If we get a no answer, we go to another plant or warehouse local," pointed out one spokesman for BDSA. "We're prepared to go to both Mitchell (Labor Secretary James P.) and McDonald if the occasion arises but so far it hasn't."

High Cost

Although only 25 steel service centers have been closed down by the strike, they handle an estimated 7 to 10% of the industry's volume and would have the biggest stocks of alloy steel. Most defense steel, however, is ordered directly from the mill because of the specialized requirements as to chemistry, size and shape.

The average small warehouse is not usually prepared to tie up much of its capital in alloy steel items, many of them ranging upwards in price from $2.80 per pound.

When the strike is settled, the steel service centers that have been struck expect a booming business for the hard-to-get products. Some of the steel service centers that were struck at the same time as the mills on July 15th have 90 to 95% of their normal inventory. The items for which demand will be greatest include galvanized sheets, cold and hot rolled sheets, and wide flange beams.

Inventories Down

At the end of last week, inventories of industrial steel products held by steel service centers had dropped to 2,150,000 tons, according to Robert G. Welch, executive vice president, of the American Steel Warehouse Association. This was the fifth consecutive week that steel inventories had dropped. Mr. Welch pointed out that inventories might drop this week by only 150,000 tons because of

the short supply of some items such as galvanized and cold rolled sheets.

By this Saturday, steel service center inventories will have dropped to 2,000,000 tons, or slightly under, from 3,700,000 tons at the start of strike.

Mr. Welch said that there is a critical shortage of flat rolled products in the Chicago-Detroit area, but added that many steel service centers in other parts of the country have enough to take care of regular steel service needs of their customers although there has been considerable substitution in sizes and gauges. Shortages are also developing Mr. Welch said, in hot rolled sheets, bars, and structurals, particularly in the Middlewest. There is also some shortage in cold finished bars, especially large flats and odd sizes. In stainless, tubing, and tool steel, there is no shortage Mr. Welch said.

Alloy Steel

Frederick H. Lovejoy, president of Wheelock, Lovejoy & Company, Inc. Cambridge, Mass., said that the inventory of alloy steel held by his firm's seven outlets is down about 30%, since the start of the strike and has a "lot of holes." There have been lots of substitutions both in chemistry and sizes, he said. Most of the shortages are in smaller sizes up to four or five inches. Because of the shortage of cold rolled sheets, flat material used for die purposes are not too depleted.

Mr. Lovejoy said that business has been about the same at the firm's seven outlets which are located in the Eastern part of the country between Cambridge and Chicago. Shipments during September were 15 to 20% better than in August and were up to July level, but slightly under peak for the year set in June. Due to the lack of balanced stock, shipments may slip during October.

Excellent Rate

Business for the industry during September was at an excellent rate. Typical of many firms in the business are the results of A. M. Castle, nationwide service center chain. Robert G. Heggie, vice president, said that his firms' shipments during September were 10% better than in August and about at peak set in July. He added that shipments in October may drop, as the firm is running out of some items although it still has about 60% of pre-strike inventory. Business is best in the Midwest, followed by the East Coast and the West Coast. The tightest products are galvanized, cold rolled, and hot rolled sheets. As a service to customers and at customers' request, the firm has shipped hard-to-get items to Chicago from its other steel service centers, occasionally even from the West Coast.

Aluminum Substitutes

Spokesmen for steel service centers report that few if any of their industrial customers have switched to aluminum because of inability to get steel. An official of one steel service center explained that switching to aluminum might necessitate getting new dies.

Builders however, are using aluminum in place of galvanized. One new building in New York is reported to be subsituting aluminum for galvanized in the duct work on several floors.

Appendix C to Affidavit of Meyer Bernstein

DEPARTMENT OF THE NAVY
OFFICE OF NAVAL MATERIAL
WASHINGTON 25, D. C.

My dear Mr. McDonald:

I have just been informed that you have agreed to cooperate in the removal of certain steel from the Lukens Steel Company, Coatesville, Penna. This steel is essential to certain top priority programs in the prosecution of the defense effort.

The Navy Department appreciates your cooperation by permitting certain employees to enter the plant and assist in the removal of this essentially needed material.

Sincerely yours,
R. L. SWART

Mr. David J. McDonald, President
The United Steelworkers of America (AFL-CIO)
Conference Room "B", Interdepartmental Auditorium
Department of Labor, Washington 25, D.C.

October 13, 1959

R. L. Swart
Rear Admiral, USN
Vice Chief of Naval Material
Washington, D. C.

My dear Admiral Swart:

I deeply appreciate your letter of October 13, 1959 and your statements regarding cooperation extended to the Navy Department by the United Steelworkers of America in arranging for certain of its members who are on strike at the Lukens Steel Company to enter the company's plant and remove steel products essential to certain top priority programs for the defense effort.

I wish you to know that it has always been, and will continue to be, the firm policy of the United Steelworkers of America to cooperate fully with the government in removing steel products from steel mills on strike when required for defense purposes. Since 1949 the United Steelworkers of America has been forced to engage in four national steel strikes in order to obtain equitable wages and conditions for its members. These strikes occurred in 1949, 1952, 1956 and of course in 1959. During each of these strikes the officers of this Union made arrangements with responsible officials of the Defense Department to remove promptly steel products from struck mills for shipments to defense contractors. To my knowledge re-

quests made pursuant to these arrangements were complied with by the members of this Union in former years and have been complied with during the current strike.

I want you to know that the United Steelworkers of America consider themselves as citizens first and we will continue to provide full cooperation to the government and the public for a strong America.

Sincerely yours,

President

[Title omitted in printing]

AFFIDAVIT OF OTIS BRUBAKER

CITY OF WASHINGTON
DISTRICT OF COLUMBIA ss

Otis Brubaker, being duly sworn, deposes and says:

My name is Otis Brubaker. I am Research Director of the United Steelworkers of America, which position I have held for more than 12 years. I have previously held economic research, educational and administrative positions in the federal government, in universities, and in private business. I hold the degree of Doctor of Philosophy from Stanford University with major study and research in political science, labor problems and economics. I also hold the degree of Bachelor of Arts from the University of Kansas.

My experience and education have made me thoroughly familiar with labor economics and labor relations practices, particularly in the steel industry. I am familiar with the history of collective bargaining between the steel industry and the United Steelworkers of America, and the terms of the collective bargaining agreements which the United Steelworkers have negotiated since 1937.

Since the Steelworkers Organizing Committee, which was the predecessor of the United Steelworkers of America, negotiated its first contract with the basic steel industry in 1937, it has been normal practice in the industry to make wage increases, and major "fringe" adjustments as well, effective as of the date of termination of a prior agreement or as of the date of a wage reopening. Where agreements have been extended beyond these normal dates, such increases have generally been applied retroactively to cover the period of extension.

This practice has continued down to the present. A number of steel producers which are under contract with the United Steelworkers of America are presently operating under extension agreements. The vast majority of those extension agreements provide that when new agreements are negotiated, their economic improvements will be applied retroactively to the period covered by the extension agreements. The same is true of the extension agreements which are now in effect between the United Steelworkers of America and the major aluminum companies and can companies.

I have prepared a chronology of the relevant contract settlements in the steel industry, beginning with the first agreement negotiated between the Union and the steel-producing subsidiaries of United States Steel Corporation in 1937. This chronology reveals that with few exceptions the parties have either 1) made the adjustments

effective as of the normal termination or wage opening dates; or earlier, when agreement was reached on or before these dates, or 2) made the adjustments retroactive to these normal dates or other appropriate dates where work has been performed under some sort of contract extension. There has always been some form of retroactivity where there has been Government intervention in the collective bargaining process.

The following chronology summarizes the manner in which the principle of retroactivity has been followed in collective bargaining between the United Steelworkers of America and the steel industry since 1937:

1937 The first collective bargaining agreement negotiated by the Union (then the Steel Workers Organizing Committee) with the major Basic Steel producer was with Carnegie-Illinois Steel Corporation, a steel-producing subsidiary of U. S. Steel Corp.*

It was entered into on March 2, 1937. On March 17, 1937, agreements were concluded with U. S. Steel's other steel-producing subsidiaries: American Steel and Wire Co., Columbia Steel Co., National Tube Co. and Tennessee Coal Iron and Railroad Co. The effective date of the economic adjustments negotiated was March 16, 1937.

1941 The 1937 agreements were terminable upon notice subsequent to February 28, 1938. Such notice was served by the Union in the spring of 1941. Negotiations ensued and, on April 1, 1941, when the agreements were about to terminate, new agreements had not yet been reached. The parties then extended the period of negotiations, and, on April 15, 1941, signed new agreements which had been arrived at subsequent to April 9, 1941. The economic adjustments agreed to were made effective *retroactively* to April 1, 1941.

1942 The 1941 agreements were terminable at any time 20 days after notice was given by either party. In the early part of 1942 the Union became the collective bargaining representative of employees at Bethlehem Steel, Republic Steel, Youngstown Sheet and Tube and Inland Steel. The certification dates were February 6, February 7, February 10, and February 10, 1942, respectively. Attempts to negotiate first agreements with these Companies re-

* The effective dates of wage and "fringe" adjustments negotiated by the Union and U. S. Steel Corp. from 1937 to the present have been, in almost all instances, identical with the effective dates negotiated with all of the major producers. Where the dates were not identical, the variation was limited to a few days. The chronology in this statement sets forth the facts with reference to the settlements with U. S. Steel Corporation.

sulted in a deadlock and the dispute, known as the "Little Steel" case, was certified to the National War Labor Board. The NWLB on July 16, 1942, ordered a wage increase effective *retroactively* to the dates in February 1942 when the Union was certified as the collective bargaining representative of the employees of the "Little Steel" Companies.

Although the Union had publicized its wage proposals to the Steel Industry throughout the negotiations with the "Little Steel" Companies, actual written notice was not served on U. S. Steel Corp. until July 21, 1942. The reason for this delay was that the filing of notice of termination of the U. S. Steel agreements while the "Little Steel" dispute was pending before the NWLB would have served no useful purpose. Agreement could not have been reached with U. S. Steel in that period and termination of the agreements would have resulted either in a strike or certification of the dispute to the NWLB. Immediately following the issuance of the War Labor Board's order in the "Little Steel" case, the Union served written notice on U. S. Steel Corp. In the negotiations which followed, the Union and U. S. Steel came to agreement on the identical wage increase ordered by the NWLB in the "Little Steel" case, but were in disagreement as to the effective date of such wage increase. This dispute then was certified to the NWLB and the Board ordered (8 26 42) that the wage increase be paid retroactively to February 15, 1942.

1944 The 1942 agreements were terminable upon 30 days' notice at any time. On December 2, 1943 the Union served notice of termination. Negotiations began in the early part of December 1943, but no agreement was reached when, on December 27, 1943, the NWLB ordered that operations were to continue past the termination date of the agreements under the old terms and conditions, but that any wage adjustments ordered by the Board would be retroactive to the expiration date of the old agreements. The hearings before the NWLB were of a protracted nature and the Board did not issue a directive order until November 25, 1944. The major economic adjustments ordered by the Board were ordered *retroactively* to January 1, 1944, the day following the expiration dates of the former agreements. These economic adjustments were incorporated into the parties' agreements dated March 13, 1945, except that the adjustments arising from a wage inequity program ordered by the Board were not actually put into effect until January 13, 1947. All such adjustments, including an agree-upon portion of the wage increases which finally resulted from the wage inequity were also applied *retroactively* to January 1, 1944.

1946 The 1945 agreements contained an expiration date of October 15, 1946 unless there was a change in National wage stabilization policy prior to that date, in which case the agreements were terminable upon written notice. In September 1945, following a revision of wage stabilization policies, the Union proposed that a wage increase be granted. Negotiations did not result in an agreement. On December 31, 1945 the President of the United States appointed a fact-finding board to investigate the dispute. The President requested and obtained a one-week postponement of the strike deadline from January 11 to January 21, 1946, when the strike began. Settlement was reached on February 15, 1946 providing for a wage increase, one-half of which was effective February 16, 1946 and one-half of which was effective *retroactively* to January 1, 1946.

1947 The 1946 agreements carried a termination date of February 15, 1947. On January 24, 1947 the parties extended the termination date to April 30, 1947. New agreements were negotiated on April 22, 1947 providing for a wage increase, the major economic change, effective *retroactively* to April 1, 1947.

1948 The 1947 agreements contained an expiration date of April 30, 1949 except that on April 1, 1948, notice could be given of a desire to negotiate on wages. The agreements also provided that if no agreement on wages was reached by April 30, 1948, wages were to remain unchanged until April 30, 1949. Notice was given by the Union on April 1, 1948 but by April 30, 1948 no agreement had been reached. However, in mid-July 1948 U. S. Steel offered a wage increase which was accepted by the Union, effective July 16, 1948.

1949 The 1947 agreements, as amended on July 16, 1948 were due to terminate on April 30, 1950. However, they were openable on July 16, 1949 on wages and social insurance. The agreements were opened by the Union. Negotiations were unsuccessful and the President of the United States appointed a fact-finding board to find the facts about the dispute and make recommendations for settlement. The board submitted a report on September 10th. The Union accepted the board's suggested basis of settlement but U. S. Steel and most of Industry did not. Negotiations continued until October 1, when a strike began. Agreement was reached with U. S. Steel on November 11, 1949 providing for the institution of insurance and pension plans effective March 1, 1950. The pension plan was applied *retroactively* by providing pension benefits for employees retired on or after March 1, 1948.

1950 The 1947 agreements, as amended in 1948 and 1949, were to terminate December 31, 1951 but were openable on wages on December 31, 1950. Wage negotiations under this wage reopener

were concluded with agreement on a wage increase on November 30, 1950. It was put into effect on December 1, 1950, 31 days *before* the effective date provided under the wage reopening provision of the existing agreements.

1952 As noted, the 1947 agreements, as amended in 1948, 1949 and 1950, contained a termination date of December 31, 1951. Negotiations in the latter part of 1951 did not produce an agreement. On December 22, 1951 the President of the United States referred the dispute to the Wage Stabilization Board. The President requested postponement of the strike scheduled for December 31, when the agreements were to expire. A special convention of the Union postponed strike action pending disposition of the dispute by the Wage Stabilization Board. On March 20, 1952, the WSB recommended various contract provisions for settlement, including a 3-installment wage increase—12½¢ an hour (the major portion and first installment) of which was to be *retroactive* to January 1, 1952, the day following the expiration date of the prior agreements. U. S. Steel rejected the WSB's recommendation. A subsequent strike was settled on July 24, 1952. The major part of the settlement was made *retroactive*—a wage increase (16¢) *retroactive* to March 1, 1952 and vacation improvements effective *retroactively* to January 1, 1952.

1953 The 1952 agreements provided for termination on June 30, 1954 but were openable on wages on June 30, 1953. Agreement was reached on June 12, 1953 on a wage increase effective June 12, 1953, 18 days before the wage reopening date.

1954 On the termination date of the 1952 agreements, June 30, 1954, agreement was reached on new contracts. The new agreements were dated July 1, 1954 and their provisions became effective on that date.

1955 The 1954 agreements contained an expiration date of June 30, 1956, but were reopenable on wages June 30, 1955. A wage increase was negotiated on July 1, 1955, effective that date.

1956 The 1954 agreements terminated on June 30, 1956. No agreement was reached in negotiations up to that date and a strike began on July 1, 1956. It was terminated by agreements dated August 3, 1956 which provided for various economic adjustments effective August 3, 1956 and on subsequent dates throughout the 3-year period of the agreements.

1959 The 1956 agreements were to terminate June 30, 1959. Negotiations up to that date were unsuccessful and the agreements were extended until July 14 at the request of the President of the United States. Negotiations during the extension period were also unsuccessful, and a strike began on July 15. Many steel

companies continued to operate under extension agreements, however, and nearly all of these provide for retroactive application of any economic improvements which will be negotiated.

The above chronology indicates that, with respect to retroactivity, agreements between the steel industry and the United Steelworkers fall into the following categories:

1. *Initial Agreements:* These were made effective as of the date of the first agreements in the case of U. S. Steel (1937), and retroactive to the NLRB certification dates in the case of Bethlehem, Republic, Youngstown and Inland (1942).

2. *Agreements Negotiated After a Postponement or the Withholding of Strike Action by the Union Pending Hearings by Government Boards:* retroactivity to a date prior to former contract expiration (1942 and 1949); retroactivity to the prior contract expiration date (1944 and, recommended in 1952); retroactivity to the date of appointment of a Government fact-finding board (1946); retroactivity to a date subsequent to the prior contract expiration date (1952).

3. *Agreements Negotiated After Extensions Not Related to Government Proceedings:* retroactivity to the prior contract expiration date, as extended by agreement (1941); retroactivity to a date prior to the contract expiration date, as exended by agreement (1947).

4. *Agreements Negotiated Prior to the Contract Expiration Date:* 1950, 1953, 1954 and 1955. In 1950 and 1953 the wage increases negotiated were put into effect *before* the prior contract expiration dates. In 1954 and 1955 the increases were effective as of the "normal" contract termination or wage reopening dates.

5. *Agreement Negotiated Under a Wage Reopener, But After the Reopening Date Was Passed:* no retroactivity (1948), but strike action was not permissible on the date of the wage opening.

6. *Agreement Negotiated After a Strike, Not Postponed or Terminated at Government's Request:* no retroactivity (1956), but retroactivity would have been meaningless because the strike started on the date of contract termination.

Otis Brubaker

SUBSCRIBED AND SWORN TO BEFORE ME

This --- day of October, 1959
Notary Public
My commission expires 1 November, 1959

[Title omitted in printing]

AFFIDAVIT OF OTIS BRUBAKER

STATE OF PENNSYLVANIA
COUNTY OF ALLEGHENY ss

Otis Brubaker, being duly sworn, deposes and says:

My name is Otis Brubaker. I am Research Director of the United Steelworkers of America, which position I have held for more than 12 years. I am thoroughly familiar with the location and types of steel producing facilities in the United States.

There are, in the United States, many hundred hot rolling mills, with supporting blast and steel making furnaces, together with all ancillary facilities required in the production of hot rolled steel products of various sizes, grades and specifications. The 66 steel companies presently operating, with 15.36% of total industry ingot capacity, themselves have several hundred hot rolling mills and related producing facilities.

Otis Brubaker s
Otis Brubaker

SUBSCRIBED AND SWORN TO BEFORE ME
This 20th day of October, 1959
Daniel J. Horney s
Daniel J. Horney, Notary Public
Pittsburgh, Allegheny County
My Commission Expires February 11, 1963
SEAL

[Caption and Cover omitted in printing]

Hearing on Petition of United States of America for Injunction
Held at Pittsburgh, Pennsylvania
Tuesday, October 20, 1959
BEFORE: Honorable Herbert P. Sorg, Judge

COUNSEL PRESENT

George Cochran Doub, Esq., Hubert Teitelbaum, Esq., Donald MacGuinneas, Esq., and Harland F. Leathers, Esq., appearing on behalf of the Government;

Arthur J. Goldberg, Esq., David E. Feller, Esq., Elliot Bredhoff, Esq., and Jerry D. Anker, Esq., appearing on behalf of United Steelworkers of America;

John C. Baine, Jr., Esq., appearing on behalf of iron and steel producing companies;

Nicholas Unkovic, Esq., appearing on behalf of Pittsburgh Steel Company;

John G. Wayman, Esq., appearing on behalf of Crucible Steel Company;

William Kelly Montague, Esq., appearing on behalf of a number of independent ore companies.

Ruby M. Palmer
Harriet Cole Thomas

THE COURT: Mr. Teitelbaum.

MR. TEITELBAUM: May it please the court, this is the time set for hearing at Civil Action No. 18212.

With permission of the court, I would like to introduce and move the admission for the purpose of this matter before the court of Mr. George Cochran Doub, Assistant Attorney General of the United States, who is a member of the bar of Maryland and the United States Supreme Court; Mr. Donald B. MacGuineas, an attorney with the Department of Justice of the United States, a member of the bar of Illinois and the United States Supreme Court; and Mr. Harland F. Leathers, an attorney with the Department of Justice of the United States, a member of the bar of New York and the United States Supreme Court.

THE COURT: The motion is granted.

MR. WILNER: If the court please, I would like to introduce and make some motions for special admissions also.

First of all, I should like to introduce Mr. Arthur J. Goldberg, a member of the Illinois bar and the District of Columbia bar, general counsel of the Steelworkers and special counsel of the A. F. of L.-C.I.O.; and general counsel of the Industrial Union Department of the A. F. of L.-C.I.O. Mr. Goldberg is a member also of the United States Supreme Court. I move his admission specially for the purpose of this case, your Honor.

THE COURT: The motion is granted.

MR. GOLDBERG: Thank you, your Honor.

MR. WILNER: I would also like to introduce Mr. David Feller, associate general counsel of the United Steelworkers of America. Mr. Feller is a member of the court of Massachusetts, admitted in Massachusetts, and in the District of Columbia and in practically every court of appeals for the various circuits. I move his admission specially for this hearing.

THE COURT: The motion is granted.

MR. WILNER: Mr. Elliott Bredhoff, also associate general counsel of the Steelworkers, a member of the bar of New York and of the District of Columbia and of various courts of appeal, your Honor, I move the admission of Mr. Bredhoff.

THE COURT: Motion granted.

MR. WIENER: Finally, Mr. Jerry Anker, assistant general counsel of the United Steelworkers of America and a member of the District Court of Columbia. I move his admission.

THE COURT: Motion granted.

Mr. Bane.

MR. BANE: If the court please, I should like to move the admission for the purposes of this case of Mr. William Kelly Montague, of Duluth, Minnesota, a member of the highest court of Minnesota, of the Circuit Court for the Eighth Circuit and various other federal courts. Mr. Montague represents a number of independent ore companies which appear as defendants in this case.

THE COURT: Motion granted.

MR. MONTAGUE: Thank you.

THE COURT: In a preliminary way, Mr. Doub, has any counsel any question concerning the jurisdiction of this court over the parties?

MR. GOLDBERG: No, your Honor, we have none.

MR. BANE: There is just one question, your Honor.

THE COURT: Mr. Bane.

MR. BANE: We have agreed to appear for the steel producing defendants and their subsidiaries and affiliates. I have word that the Judson Steel Company, named as a defendant here, believes they should not be in the case. They operate a fabricating plant in Oakland, California. Under an agreement between them and this union an election is being conducted there today which is likely to terminate the strike as to them.

In that situation, they believe they should not be called on to appear here.

I expect the union officers here could ascertain the same facts I have stated to your Honor if they don't know them already.

THE COURT: What is your position, Mr. Goldberg?

MR. GOLDBERG: Your Honor, if Mr. Bane says that this is so, undoubtedly it is so and we will confer with him and report to you, if we may, a little later, and perhaps agree to eliminate them from the case.

THE COURT: The court will reserve decision on the question.

MR. DOUB: If the court please, this is a petition on behalf of the United States for injunction to restrain the national steel strike which extends from the Atlantic Seaboard to the West Coast.

This proceeding is instituted upon the express and personal direction of the President of the United States.

Now today we are not proceeding, as has been done in every other similar proceeding under the National Labor Relations Act of 1947. In each of the prior proceedings the Department of Justice has asked for a temporary restraining order, upon an ex parte basis.

Here we have entered into a stipulation of the parties which enables the court to hear finally our prayer for an injunction, without the delay that would ordinarily accompany such a request.

By the stipulation the parties have agreed that this case will be submitted for final hearing immediately upon the filing of our petition and that evidence shall be submitted by affidavits and exhibits only.

We in effect agreed that the deponents, if they were here, would testify to the statements they have made in their sworn statements.

Now, each of the defendants has waived service of process and submitted themselves to the jurisdiction of the court. They have all waived the right to file any responsive pleadings to the complaint with the exception of the United Steelworkers of America, which filed its answer immediately before the hearing.

If the court please, the first question is: Does the court have jurisdiction? And you will recall that the Statute provides that upon direction of the President, the Attorney General may petition any district court having jurisdiction of the parties. And I think at the outset of this hearing it became clear from your Honor's questions and answers that you do have jurisdiction of the parties.

I might say that this is not an ex parte hearing without notice. The fact is that counsel for the parties are here, in court, and I would like to state for the record that I gave them notice of this hearing yesterday afternoon.

Now, we believe that the ninety-six steel companies which we have made defendants with the United Steelworkers of America include every steel company, every iron ore company, every shipping company, including subsidiary corporations, which are involved in this national work stoppage. We have certainly attempted to do so upon a comprehensive basis.

Now, do you have jurisdiction from the point of view of the statutory conditions precedent?

We believe that you will find, your Honor, that there has been meticulous compliance with each and every statutory requirement preliminary to the institution of this proceeding.

First, the President of the United States, pursuant to the national emergency provisions of the Act, appointed a board of inquiry, by his executive order of October 9, 1959, to inquire into the issues involved in the labor dispute.

The President made a finding in his order that this strike affects a substantial part of an industry engaged in trade, commerce and transportation and in the production of goods for commerce among the states and with foreign nations, and if permitted to continue the strike will imperil the national health and safety.

Upon receipt by the President yesterday of the report of the board of inquiry, the President directed the Attorney General to institute this proceeding, and in his directive to the Attorney General the President reiterated and confirmed his earlier finding, that if this strike continues it will imperil the national health and safety.

So each of the statutory required steps preliminary to the filing of this application has been made.

Now I would like to say this, if the court please, at the outset, about the theory and philosophy of this proceeding.

All federal labor regulations, beginning with the Wagner Act and extending through the Labor Relations Management Act of 1947, recognize that labor strife adversely affects important economic and social interests of the public and it has sought to protect those interests through the process of collective bargaining. These Acts include provisions designed to further that free collective bargaining process or to adjust the balance between the parties to the process by mediation and otherwise.

The national emergency provisions which we invoke today, your Honor, go further. They recognize that in certain situations bargaining process, when it includes resort to the strike or lockout, may lead to consequences which interfere with the immediate and pressing needs of the nation. And such a situation, Congress has determined, arises when a strike affects an entire industry or a substantial part thereof and imperils the national health or safety.

The Government is here today by virtue of a tragic failure of free collective bargaining. Because some voices have been raised in the land to the contrary, I wish to make this clear.

This proceeding is not designed to improve or to prejudice the bargaining position of either workers or management. It is designed to protect the public and the public interest from a national strike of a critical character. And such a strike has been deemed by the Congress inimical to the general welfare and an invasion of the rights of the public.

So this proceeding is a recognition, if the court please, that this steel strike is no longer a private dispute between private parties. So we are asking the court to act in the public interest and not in the adjudication of private rights of the contending parties.

Now, the government's position that the steel strike, its continuance, imperils the national health and safety rests upon two separate and independent foundations.

First, the strike has jeopardized and its continuance will imperil critical top priority programs of the United States, by its deprivation of essential steel and special products.

And secondly, the strike has begun a creeping economic weaken

ing of the fabric of our country's economy, which if permitted to continue will result in disastrous consequences to the nation.

Now we believe these factors, if the court please, are of such a compelling character that the issuance of the injunction prayed should be granted promptly.

If the court please, counsel have agreed, subject to your Honor's approval, to the following procedure: That each counsel will make a short opening statement. We will then offer in evidence all the affidavits at one time without comment, so that the record is clear and not confused. And after that, we will argue the case.

THE COURT: It appears to be a very logical procedure.

(Note: Change of reporters.)

THE COURT: Mr. Goldberg.

MR. GOLDBERG: May it please the court, I appreciate the privilege and honor you have conferred upon me by authorizing me to appear here specially on behalf of the United Steelworkers of America, whom I have the privilege to represent as their general counsel.

THE COURT: You are very welcome.

MR. GOLDBERG: My distinguished colleague and friend the Attorney General has correctly stated the substance of our procedural agreements, which have been incorporated in a stipulation which I believe is on file in this case.

It is not my purpose at the moment to enter into the fuller argument that we will have after these preliminary statements. I wish, however, to make two or three observations to commence the proceeding.

This is a grave controversy of national moment and importance, and it is one in which the Government of the United States obviously has a great interest, as manifested by this proceeding. It is one in which the steelworkers' union and striking steelworkers of course have a great interest. It is one in which the industry has a great interest, and of course the country at large.

And after having agreed with my friend on the procedural statements, I find myself in the unenviable position of having to disagree with him on his next statement, addressed to the merits of the controversy.

The President of the United States has not made a finding that the present strike, if permitted to continue, will imperil the national health and safety. If he made a finding to that effect, it would be contrary to the statute. The President of the United States, as the Executive Orders attached to the Government's petition demonstrate, has expressed an opinion—and I use that word, because it is the President's word—that the strike, if permitted to continue,

will imperil the national health and safety. It was not a finding and could not be a finding, because it was not made on a record or upon a hearing, which would be required for a such a finding. It was simply an ex parte statement of the President, for which statement I certainly have high regard and respect since it comes from the President, but it was merely an ex parte statement of opinion required to set this machinery in motion which we are all participating in today.

Nor did this Board of Inquiry, contrary to the action of other Boards of Inquiry under the Taft-Hartley Act, conduct an investigation or make findings with respect to the question of whether the present strike will imperil the national health and safety. The chairman of the Board of Inquiry, the distinguished doctor and public servant Dr. George Taylor, stated specifically that as he read the statement, and he read it correctly, it is not the function of the Board of Inquiry to express a finding on this subject.

If the court please, we offered some evidence on that subject, subject to that statement, to the Chairman of the Board, which we accepted as being an appropriate statement, and we offered to communicate that information and evidence to the President of the United States, so that the President could have our viewpoint before him. But the Board of Inquiry in its findings, and its report to the President, made no finding on that issue.

The question of whether or not the national health and safety is imperiled is before Your Honor to decide. The Court is not reviewing the finding of the President. The President has made no finding, he has expressed an opinion. The court is not asked to review the finding of the Board of Inquiry. It has made no finding, it purported to make an opinion. It is this court which has the simple duty and responsibility to make the finding on this issue. And it is upon this court that the heavy burden rests to determine whether or not under the statute and under the Constitution of the United States this court would deem it appropriate to enter an order to end the strike by injunction—a heavy responsibility indeed.

I merely want to say that, because I think there has been a misapprehension on the part of the Government as to the statute, which is very clear, and as to the expressions of the President, which are very clear. And later I shall address myself in greater detail to that problem.

In addressing myself now to the court's heavy responsibilities it will be our position, if the court please, that the steel strike does not imperil the national health or safety, and that this court should so find; and so finding, the court will not have jurisdiction of the subject matter to issue an injunction, although we have conceded jurisdiction of the parties.

Secondly, we shall contend that even if the court disagrees with us and finds that in his opinion the national health and safety is imperiled by this dispute, being a court of equity, and being vested both by the statute and by the law with discretion to determine whether the equitable writ of injunction should issue, that under the circumstances of this case the court should exercise its discretion to withhold injunctive relief.

And thirdly, we shall contend that if the court determines it has jurisdiction of the subject matter, and that the statutory prerequisites are met, and if the court determines that it might be appropriate in the exercise of its discretion to grant injunctive relief, that no injunction should be granted because the eighty-day injunction provisions of the statute, in the sections before us, are unconstitutional, as they confer on the courts duties which are not judicial and are not connected with any case or controversy within the plain meaning of the Constitution.

These are the contentions we shall advance and, with your permission, I shall devote some time to each one of them upon the conclusion of the evidentiary offering that the Attorney General mentioned.

MR. BANE: If the court please, I will speak from here, if that is acceptable. I believe nothing I could say at this point would add anything to the lucid explanation of the issues of this case made by Mr. Doub and Mr. Goldberg. Therefore we will add nothing to their statements.

THE COURT: You waive your opening statement?

MR. BANE: We do.

THE COURT: As I understand, there will be no oral testimony. Is that correct?

MR. DOUB: That is correct, your Honor.

Document marked Government Exhibit No. 1.

MR. DOUB: I would like to submit in evidence on behalf of the United States the affidavit of Frederick A. Mueller, Secretary of Commerce, dated October 16, 1959, marked Government Exhibit No. 1.

MR. GOLDBERG: I have no objection to the affidavit being admitted into evidence, for whatever the offer is worth.

MR. BANE: We have no objection.

THE COURT: Without objection, the affidavit is received. I presume all counsel have copies of these affidavits.

MR. DOUB: Yes, Your Honor. They were delivered to the other counsel yesterday evening.

Document marked Government Exhibit No. 2.

MR. DOUB: I would like to offer in evidence the affidavit of Thomas S. Gates, Jr., Acting Secretary of Defense of the United States, dated October 16, 1959, and marked Government Exhibit No. 2.

MR. GOLDBERG: I have the same position, Your Hopor, with respect to this affidavit.

MR. BANE: No objection.

THE COURT: Without objection, the affidavit is admitted.

(Document marked Government Exhibit No. 3.)

MR. DOUB: I would like to offer, as Government Exhibit No. 3 the affidavit of James P. Mitchell, Secretary of Labor, dated October 17, 1959.

(Document marked Government Exhibit No. 4)

MR. DOUB: I offer as Government Exhibit No. 4 the affidavit of Hugh L. Dryden, Deputy Administrator, National Aeronautics and Space Administration of the United States.

MR. GOLDBERG: Your Honor, without the necessity of repeating myself, may my same comments apply to the whole series of Government's affidavits?

MR. BANE: The same, if Your Honor please.

THE COURT: All right.

(Document marked Government Exhibit No. 5.)

MR. DOUB: I offer as Government Exhibit No. 5 the affidavit of A. R. Luedecke, General Manager of the Atomic Energy Commission, dated October 16, 1959.

(Document marked Government Exhibit No. 6.)

MR. DOUB: I offer as Government Exhibit No. 6 the affidavit of Wendell B. Barnes, Adminstrator of the Small Business Administration, dated October 15, 1959.

(Document marked Government Exhibit No. 7.)

MR. DOUB: I offer as Government Exhibit No. 7 the affidavit of Howard G. Freas, member of the Interstate Commerce Commission.

(Document marked Government Exhibit No. 8.)

MR. DOUB: I offer in evidence as Government Exhibit No. 8 the affidavit of Clarence G. Morse, Maritime Administrator and Chairman of the Federal Maritime Board, dated October 16, 1959.

(Document marked Government Exhibit No. 9.)

MR. DOUB: I offer as Government Exhibit No. 9 the affidavit of Dr. Raymond J. Saulnier, Chairman of the Council of Economic Advisers of the Federal Government, dated October 19, 1959. And with the kind permission of Mr. Goldberg, who does not object, I am attaching to it a statement of the qualifications and background of Dr. Saulnier with respect to economic matters. And I might say, Your Honor, that this is a rebuttal affidavit, and I suppose logically it should be submitted after the affidavits of Mr. Goldberg, but we decided to put them all in at one time.

MR. GOLDBERG: We have no objecton to these being offered at this time.

MR. BANE: We have no objection to any of the affidavits offered.

THE COURT: The affidavits are admitted, without objection.

MR. GOLDBERG: May it please the court, at this time I would like to offer a series of affidavits, which in a sense are already part of the record, they are part of our answer; but, in order to keep this continuity of the record, I will reoffer them.

(Document marked Defendant Union Exhibit No. 1.)

MR. GOLDBERG: The first is affidavit of David J. McDonald, the president of United Steelworkers of America, which I will ask be received in evidence as Defendant Union Exhibit No. 1.

THE COURT: Will there be objections to the affidavits offered by Mr. Goldberg?

MR. DOUB: There will be no objection to any of the affidavits offered on behalf of the United Steelworkers of America, in behalf of the United States.

THE COURT: Mr. Bane?

MR. BANE: Mr. Goldberg has shown us his affidavits, and we have no objection to the admission of any of them in evidence.

(Document marked Defendant Union Exhibit No. 2.)

MR. GOLDBERG: We now offer in evidence as Defendant Union Exhibit 2 the affidavit of Mr. I. W. Abel, the Secretary-Treasurer of United Steelworkers of America. Mr. Abel's affidavit is marked Defendant Union Exhibit No. 2, and may it be received in evidence?

THE COURT: The affidavits are admitted, without objection.

(Document marked Defendant Union Exhibit No. 3.)

MR. GOLDBERG: We now offer as Defendant Union Exhibit No. 3 the affidavit of Mr. Robert R. Nathan.

THE COURT: The affidavit is admitted.

(Document marked Defendant Union Exhibit No. 4.)

MR. GOLDBERG: We now offer in evidence as Defendant Union Exhibit No. 4 the affidavit of Leon H. Keyersling.

(Document marked Defendant Union Exhibit No. 5.)

MR. GOLDBERG: We offer in evidence as Defendant Union Exhibit No. 5 the affidavit of Meyer Bernstein.

(Document marked Defendant Union Exhibit No. 6.)

MR. GOLDBERG: We offer in evidence as Defendant Union Exhibit No. 6 the affidavit of Dr. Otis Brubaker, executed the 19th day of October 1959. I mention that by the date of execution, because we have another affidavit from Dr. Brubaker.

(Document marked Defendant Union Exhibit No. 7.)

MR. GOLDBERG: And finally I offer another affidavit from Dr. Brubaker, which I will ask be received in evidence as Defendant

Union Exhibit No. 7, this affidavit being executed and sworn to on the 20th day of October, 1959.

THE COURT: All of the affidavits are admitted, without objection.

MR. GOLDBERG: And this completes our evidence in the form of affidavits, pursuant to stipulation.

THE COURT: Have all these affidavits been attached to your stipulation?

MR. GOLDBERG: They have been.

THE COURT: Mr. Bane.

MR. BANE: If the court please, the employer defendants have no evidence or affidavits to offer at this stage of the case.

THE COURT: I will inquire of counsel, do they intend to deal with these affidavits in detail in their arguments? Do you intend to describe them in detail? The court has not had an opportunity to examine them.

MR. DOUB: We will be governed by Your Honor's wishes in the matter, Your Honor.

THE COURT: We can have the alternative of taking time to read them or if counsel will deal with them in detail.

MR. GOLDBERG: It will be my thought that I would describe them sufficiently so for the purpose of argument and discussion they would be adequately summarized. I will also make comment on the Government's affidavits similarly.

THE COURT: In any event, it would not be necessary to recess as far as you are concerned?

MR. GOLDBERG: Not as far as I am concerned.

THE COURT: How about your proposal?

MR. DOUB: I would suggest, Your Honor, a thirty-minute recess, so that Your Honor has an opportunity to read them over, and at least when we talk about them you will have some idea what they mean.

THE COURT: All right. The court will recess for thirty minutes.

(Thirty-minute recess taken.)

THE COURT: Mr. Doub.

MR. DOUB: If your Honor please, this injunction proceeding is unique and unprecedented in a number of respects.

First, the scope, the geographical area of the strikebound steel plants, the iron ore mines, and the transport facilities are the most extensive that have occurred before. Three hundred ten steel plants, 118 iron ore mines and 11 transport facilities located in 25 states have been shut down since July 15, 1959.

The number of workers who are on strike, namely 510,000, exceeds the number involved in any other strike in which La-

Hartley has been invoked since its adoption twelve years ago. For example, the strike in the bituminous coal fields in 1948 involved about 350,000 employees; the bituminous coal strike of 1950, 370,000. The 1953, '56 and '59 dock strikes involved about 50,000 workers each. And the strike in the copper mines in 1951 involved 100,000 workers.

The 1952 strike of the Dunkirk plant of American Locomotive only involved 1500 workers, where an injunction was granted, and the strike at the Oak Ridge plant in 1954 involved a comparatively small number, as well as at the Goodyear plant in Ohio.

This situation is unprecedented too, Your Honor, in that the President of the United States deferred invoking the national emergency provisions of the Act and directing the institution of this proceeding, in the hope that this labor dispute might be resolved by collective bargaining, for a longer period of time than in any other strike upon a national basis.

In the two maritime industry strikes and the two dock strikes in 1948 they were enjoined under this Act before they began, so there was no work stoppage at all. You will recall that these provisions provide not only for a restraint of strikes in action but of threatened stoppages, threatened work stoppage.

In the 1948 and 1950 coal strikes, they were enjoined twenty days and five days respectively after they began. And the '53, '56 and '59 dock strikes were enjoined four days, 36 days, 8 days, and last week just a few days after they began.

I might say in referring to that—the injunctions against a threatened strike which occurred in a number of instances—it points up the basic fallacy in the affidavits submitted on behalf of the union here today, because they are directed primarily upon assertions that the strike has not yet imperiled the national health or safety.

You will notice the President of the United States, in his—I will not say finding, in view of the emphasis upon semantics of Mr. Goldberg—in his opinion said a continuance will threaten, will imperil the national health or safety.

This case is unique too, your Honor, because the Federal Government has made a more intensive effort to effect a settlement between the steel industry and the union before resorting to this procedure as a last resort than has been done in any prior case since the Act was adopted twelve years ago. There was mediation by the mediation facilities. The Secretary of Labor attempted to aid in its solution. The President summoned the negotiating parties to Washington when negotiations had broken down. The board of review did something that has never been done before. Instead of merely fulfilling its statutory responsibility of finding

the facts as to this dispute, it actively and aggressively, under its able chairman, Mr. Taylor, attempted to use its good offices to effect a settlement. And the President gave this board a longer period of time to accomplish its statutory function than has ever occurred in any case before.

So we say that responsible government, your Honor, could not permit any further delay in the filing of this petition after the report was filed.

And to show how conclusive and how definitive and how hopeless the situation was when the President acted yesterday, let me read you on page 37 the conclusion of the report of the board of inquiry. "As we submit this report, the parties have failed to reach an agreement and we see no prospects for an early cessation of the strike. The Board can not point to any single issue of any consequence whatsoever upon which the parties are in agreement."

Now, what are the facts, if you Honor please?

I had intended to summarize our affidavits but I will not do so, since you have had an opportunity to read them. I will merely summarize, then, very briefly and perhaps too briefly, what we have shown.

Production of steel, of course, is one of the largest single industries in the United States. The value of the net billings of the steel companies, exceeding twelve billion dollars in 1958, exceeds the value of all other metal products combined. In contemporary terms, steel production is viewed as a basic measure of the economic strength of a country and industry and business are so dependent upon steel that it may be deemed the backbone of the entire national economy of this country.

Now, the strike has deprived the nation of at least 85 per cent of its steel production for over three months. Inventories of finished steel products have been declining at the high rate of five million tons a month. As a matter of fact, 6,500,000 tons were consumed in July and August. We are down to 5,000,000 tons, because there are so many critical items not available.

Inventories have dropped from the abnormally high figure at the beginning of the work stoppage of 24,800,000 tons to the dangerously low figure now of only about 10,000,000 tons. Steel stocks are now below the level required to sustain the continued production of numerous industries and businesses dependent upon these products.

But this problem can not be resolved in terms of ingot tons, the mistake economist Nathan made. Inventories include a multitude of shapes and sizes and specifications necessary for the continued manufacturing operations and production schedules, and at the high current rate of inventory depletion those sechdules will be

progressively disrupted, not because there may not be ingot steel available but there are not these specialized types and forms.

Now, the intercontinental ballistic weapons program for the Atlas and Titan missiles, including the construction of their operational bases, and the Fleet ballistic missile Polaris system, including the submarine support for it, constitute, your Honor, an indispensable part of the defense effort of the United States and the defense posture of the strength of the United States.

Project Mercury the manned satellite program of the National Aeronautics and Space Administration, as well as its program for the development of powerful rocket engines for ballistic missiles—and those are the engines which we read the Soviet Union has for their space operations but which we do not have—are of national significance.

Now those programs of the highest national priority require special and unique types and shapes of steel, which the three high government officials, the Secretary of Commerce, the Secretary of Defense, the head of the Space Administration all say are not available in current production of the mills now operating, are not in inventory and they can't be met from imports.

So the current strike in the steel industry has resulted in acute shortages of special steel for the pressure vessels incident to these missiles, of structural steel for the construction of the intercontinental ballistic missile launching sites for Atlas and Titan, as well as certain elements of the Polaris weapon system, and the lack of these special steel items has also adversely affected the programs of the National Aeronautic and Space Administration. Production schedules are now affected and the continuation of the strike will seriously set these back, as well as other programs of importance.

The strike has produced some delays in nine military or civilian projects of the Atomic Energy Commission, in California, New Mexico, Nevada and New York and Ohio, and should the strike continue it will produce a spreading slowdown in construction projects and irretrievable delay.

Seven hundred sixty-five thousand workers, your Honor, have been idled by the steel strike, and of these 540,000 are on strike, members of the union. About 265,000 have been employed in other industries.

Now, we are met with a situation that the continuance of this work stoppage will result in rapidly increasing layoffs in industries and business dependent upon steel and particularly, according to the affidavit of Wendell Barnes, head of the Small Business Administration, upon small businesses which are particularly vulnerable. They could not stock up, as some of these large consumers of steel were able to do, when they anticipated this strike.

The little businesses just did not have the financial resources to do that.

Now, 150,000 workers laid off by the railroads, coal mines, and other industries have applied for unemployment compensation, and hardship and distress among these unemployed workers and their families is mounting and will increase upon an accelerated basis during a continuance of the work stoppage.

These 765,000 people that are out of work support families of over two million people dependent on them.

If the court please, what does the legislative history of these national emergency provisions show as to the intention of Congress when it adopted the Act and when it used these words which it did not define in the Statute—"imperil the national health or safety"?

We will show in detail in our brief, which we wish to submit to your Honor, that these provisions become law and were considered against the backdrop of repeated strikes in 1946 and in 1947, and particularly in the coal strike and the telephone strike. You will find that almost everyone who spoke in the Congress for or against this Act believed that it was directed primarily—these provisions—to such widespread industries as steel and coal.

For instance, President Truman, when he made his initial recommendation to the Congress, which later resulted in this legislation, said this:

> "I recommend that for the settlement of industrial disputes in important nationwide industries there be adopted the principles underlying the Railway Labor Act. The general pattern of that Act is not applicable to small industries or to small local disputes in large industries, but it would be effective as well as fair in such widespread industries, for example, as steel."

And then he mentions some others.

Repeatedly, there were references to nationwide strikes, industry-wide strikes, by Senator Taft and others.

So what inspired these provisions and what was indicated in the legislative history was that it was the magnitude of the strike that was felt, was assumed to imperil the national health or safety. For instance, Senator Ball said, "This is the only provision in the Senate bill dealing with industry-wide bargaining and strikes, which all agree is one of our major problems." And Senator Holland said that unless the pending bill is passed, "the nation will be left and our President will be left, and in particular the general public including the laboring people, will be left without the protection of any machinery at all under which we may be safeguarded against the devastating and disastrous effect of work stoppages in our basic national industries."

The use, your Honor, by these Senators of terms such as "industry-wide" and "nation-wide" and "basic" industries seems a clear indication that the congressional purpose was that the economic impact of general strikes in basic industries, such as steel, which was repeatedly mentioned, should fall within the meaning of the national health or safety. And this seemed so crystal clear to the members of the Congress that they did not deem it necessary to define those words.

But we have something more than that, your Honor, in dealing with legislative history. When the steel strike was on in 1952, the same industry, the same plants, although not as many workmen because the plants had not achieved their great productive capacity they have now, were involved and Congress itself made a congressional finding that that strike was imperiling the national safety, and they added an amendment to the Defense Production Act of 1950 which said this:

> It is the sense of the Congress that by reason of the work stoppage now existing in the steel industry the national safety is imperiled and the Congress therefore requests the President to invoke immediately the National Emergency Provisions of the Labor Management Relations Act for the purpose of terminating that work stoppage.

Now, the interesting thing is, your Honor, that the Congress, which best knew the meaning of these words, "threatened the national health or safety or imperiled it," because they adopted it and produced it, made that congressional finding at a time when that steel strike had not gone nearly as long as this strike.

Now we have also quoted from the brief of the United Steelworkers of America in the Second Circuit, in the *American Locomotive case*, where the union was contending that these national emergency provisions which we invoke here today were directed at industry-wide strikes and not to a strike involving 1500 men in one plant in New York State. And we show that they repeated the same legislative history which we have done in our memorandum. They concluded by saying, on page 40—Mr. Goldberg said and correctly said and accurately said, "Congress was, of course, thinking about nation-wide strikes."

And we have a nation-wide strike here, your Honor, and we have it in the same basic industry that Congress had in mind when it adopted these provisions.

Now, what effect should the court give, not to the finding of the President but the opinions of the President, supported by the affidavits of officials of the United States, the continuance of the strike will imperil the national health and safety?

(Note: Change of reporters.)

In each of the fourteen prior proceedings the courts have given effect to these opinions; and in view of the Constitutional and Executive responsibilities of the President, and his knowledge of national and international conditions, we submit those opinions are entitled to great weight, Your Honor.

What did Mr. Justice Jackson say in his concurring opinion in *Youngstown Sheet & Tube against Sawyer* with respect to a seizure of the steel industry carried out under an authorizing Act of Congress? He said this:

> "A seizure executed by the President pursuant to an Act of Congress would be supported by the strongest of presumptions and the widest latitude of judicial interpretations, and the burden of persuasion would rest heavily upon any who might attack it."

Now, if the seizure by the President, Your Honor, of an entire industry when authorized by the Congress would be supported by the strongest presumptions of validity and the widest latitude of judicial interpretation, I submit that those principles must apply with far greater reason, far greater force, to opinions expressed by the President pursuant to express statutory authority providing not for a seizure but for the mere restoration of a status quo in a labor dispute for a temporary period.

Now I would like to anticipate some of the contentions to be made by my friend Mr. Goldberg.

Although the Union contends that the steel strike does not imperil the national health or safety, it is significant that it does concede that the strike is causing hardship across the nation. Mr. Goldberg, general counsel for the Union, stated in his supplemental statement submitted to the Board of Inquiry, page A, "Undeniably the steel strike is beginning to make itself felt across the nation, undeniably it is causing some inconvenience and even hardships to the public, and some procurement problems"—some procurement problems—"to the defense program." And although Mr. Robert Nathan, their eminent consulting economist, theorizes that the strike does not imperil the national health and safety, he did candidly admit in his statement to the Board, "To be sure, national health and safety are clearly dependent on the continuous use of a great number and variety of items made of steel."

So the Union seems to agree, Your Honor, that the steel strike, if it continues long enough, will undeniably reach a point where the national health and safety are imperiled. But they don't think that that time point has been reached.

They suggest a narrow interpretation of the words "will imperil the national health or safety." And they suggest that the recognized right to strike is of such major consequence that the President should be required to exercise and to exhaust every other statutory power, including the institution of a system of priorities, of preemption of steel items required for defense projects, and if necessary price controls upon a national basis, because one goes with the other.

Now, we say that this theory, Your Honor, is not a tenable one. First, the enactment by the Congress of the national emergency provisions of this Act constituted a legislative judgment that no previously existing remedy at law was adequate to meet the problem of a strike or lockout endangering the national health or safety, and no later legislation purported to condition or to qualify the remedies provided in the Act.

Secondly, Congress explicitly provided in this Act the precise conditions under which an injunction proceeding should be brought and an injunction should be granted. And the contention of the Union represents an attempt on its part to have Your Honor write into this Act terms and conditions which are not there and not provided. And so we say that under established principles of statutory interpretation, where Congres defines those terms and conditions precedent to governmental action, that excludes any intention on the part of Congress to impose unexpressed or implied additional conditions.

Now, third, what are these powers they believe the President should invoke first?

The Selective Service Act of 1948 and the Defense Production Act of 1950 authorized the President to allocate materials and facilities as he may deem necessary or appropriate to promote the national defense and to place mandatory orders with companies, and specifically steel producers, for that purpose. And those orders, under these Acts, take priority of performance over every other order; and if a steel producer refuses to accord priority to them, the President is authorized to seize the plant to insure compliance.

Now, it would be meaningless for the President to place any mandatory priority orders with plants that are shut down by the steel strike, because they could not comply with such orders as long as the strike continued, and there would be no basis for seizure of the steel plants under the limited authority of this statute, because they would not be according priority to any nongovernment orders, which is a pre-condition of seizure.

So that device, Your Honor, would not solve our problem. As a matter of fact, you will find in the last paragraph of the affidavit of the Secretary of Commerce the statement that Commerce has

already issued an order, I think last Friday, requiring steel plants still in operation to give top priority to items required for the programs of the Department of Defense. But he says these defense requirements cannot be met by the small number of steel mills still operating, because the special steel products needed for defense are not carried in inventory and are not produced by the plants still operating.

Now, the affidavit of Dr. Raymond Saulnier, Chairman of the Economic Advisers to the President, points out numerous basic flaws in the contention of Mr. Nathan that the nation's health and safety will not be jeopardized by a continuation of the strike. And I will just summarize a few points made by this outstanding economist.

First, he points out that a basic flaw in Mr. Nathan's argument is that his conclusions rest on a conception of the nation's health and safety that is too narrow to be useful in assessing the full current and future impact of a prolonged shutdown of the steel industry. And he points out that our nation's safety in the international contacts depends upon the vigor and efficiency of our economy, and to accept a continued and avoidable interruption of production in a major and basic sector of our economy at this juncture of world affairs would risk serious and even fatal damage to our position in the free world. And from the international point of view, if we went on this Spartan slowdown, bare minimum steel requirement economy recommended by Mr. Nathan, it would encourage doubts on the part of friendly and uncommitted nations as to our capacity and determination to honor economic and military agreements and to face up to our new and dangerous commitments.

On just domestic—on just the domestic field alone Mr. Nathan's concept of our country's health and safety is too narrow. Mr. Nathan suggests we go back to wartime economy and wartime controls. He points out that we were able to get along during four years of war without the production of automobiles. And he points out that the defense needs represent a small percentage of the total steel production in this country, I believe about five to seven percent. Therefore, he says, stating it in ingot tons, that since there is thirteen to fifteen percent production still going at the mills now operating, therefore that fifteen percent should be enough to meet defense requirements; ignoring, however, all the specialized items involving a multiplicity of steel products that you cannot compare with in ingot ton production. Steel is not chemically or physically uniform, and its products comprise a vast variety of items processed and fabricated by the facilities of different mills and plants.

And Dr. Saulnier concludes that if it were technically possible to resume steel production even upon a selective basis suggested by Mr. Nathan, whether by seizure or condemnation, to do so would be exceedingly uneconomic and wasteful. He points out that Mr. Nathan underestimated the steel necessary to maintain—just to maintain and repair and replace essential facilities and equipment.

He points out that Mr. Nathan too was vague and indefinite as to the duration of a steel strike which would imperil the national health and safety, your Honor. For instance, this fine economist says that a continuation of the strike would not imperil the health or safety of the nation now or in the near future—or in the near future. And then he suggests a willingness to accept a delay of a few months, or a temporary delay. And he talks about "in the short run" we can stand it, but he doesn't say what he means by "short run". We think that he has greatly underestimated the economic damage that would result from a continuance of this strike, which has already had serious economic impact, and if steel inventories are exhausted wider and greater effects will be spread at accelerated rates throughout the economy, and the exhaustion of inventories is pretty imminent, Your Honor—it is imminent—and upon that exhaustion all manufacturing industries and business that use steel would have to stop operation.

The Government is not willing to accept the economic dislocations of major dimensions which the economists for the Union suggest the country should accept. And we think that would be, as Dr. Saulnier says, a callous experiment.

And furthermore, I do not believe the people of the United States, Your Honor, are prepared to accept wartime controls of price of steel products in order to enable this strike to continue.

So upon the whole we submit that we have made out an overwhelming case here, if the court please, for the issuance of this injunction forthwith. We believe we have made a stronger case than in every single one of the proceedings under the national emergency provisions of this Act. In most of those cases we were dealing—the Government's testimony was limited, in affidavit form or otherwise, to the impact of a strike upon national defense alone and defense procurement. But here we have two separate, independent solid bases upon which the court should act.

We have exercised this statutory power only as a last resort, and we deferred doing so as long as it could be deferred safely to the nation's economy and defense requirements. And we submit, your Honor, that there is no valid basis for not according the American people, whose legal right alone we are asserting here—we are not interested, or we are not here to protect the legal rights of either of these private massive parties—the issue is whether the public

has been squeezed enough by these great, powerful forces, the steel industry and the Union. We say the public has, Your Honor.

I would like to submit this brief (handing same to the court).

MR. GOLDBERG: May it please the court, if I may state the issue in this great debate we are now having, I would state it in terms of the classic problem for all judges in all courts: Do we have a nation of laws or do we have a nation of men? And we are governed by laws. And it was interesting to me to note that my distinguished friend the Attorney General did not devote himself adequately to the question of what law governs here. And what law governs here will decide this case, and not the question of assertion by the Government of the general interest, which we expect and demand of government. But we also expect of government the application, and the fair application, of the nation's laws.

The law we are dealing with is the law of Congress, and the law of Congress provided expressly that strikes should be permitted as part of the collective bargaining process, unless the nation's health or safety is imperiled. Those are the key words. Not whether the nation is inconvenienced, not whether there is hardship, but whether the nation's health or safety is imperiled.

My friend Mr. Doub referred to the fact that when Congress was considering this law Congress did debate this problem, and he mentioned specifically and quoted from the debates that took place in the House of Representatives. Well, the House of Representatives had a different law that they were considering, and the law that they were considering was not the law that was enacted by the Congress of the United States. The law that was enacted by the Congress of the United States was the Senate version of the law, which was a different law. And when he quoted the discussion which took place in the House, and he quoted it accurately, it related to the discussion of the law that the House of Representatives was considering.

And what did that law, proposed law, say? It proposed that the President should be able to seek an injunction where there was a cessation of work in services essential to the public health and safety—so far so good—or interest. That was the word that they were discussing. And obviously a steel strike is of great national interest. I would not deny that. It is great, overwhelming national interest. But the House conception of what an injunction should reach was attacked even in the House. And there was a young Congressman at that time—he is now a distinguished Senator, and some say he is also seeking higher office—Congressman Kennedy, and he objected to the word "interest". And this is what he said: "That we should apply this remedy when the strike affects health

and safety but not the welfare and interest, which may mean anything. I would not interfere in an automobile strike because while perhaps that affects the national interest, it does not affect health and safety." And when that law as enacted by the House, with the word "interest", came to the Senate Senator Taft, who had strong convictions, as we know, in this area and whose name is attached to this bill, amended it by striking out the word "interest" and confining the national emergency provision to cases in which the national health or safety was imperiled. And the Conference Committee adopted the Senate version, with minor changes, which do not affect the health and safety language.

Your Honor, there is not the slightest bit of doubt if there were a strike in the auto industry, as distinguished from the basic steel industry, more workers would be affected. In the basic steel industry we have 540,000 workers. In the basic auto industry there are six hundred to seven hundred thousand workers. But can there be any doubt in anybody's mind that if we had that type of strike, affecting a large number of workers, creating widespread unemployment, creating great hardship and inconvenience, that that strike would not be enjoinable under the provisions of this law, even though most of the affidavits that the Government filed could equally apply to that particular strike.

After all, all of us remember what happened during the war. The nation got along for four years without any new automobiles being created. It was inconvenient, it was a hardship, but nevertheless that is what happened.

So my friend does not meet the issue in this case when he talks about the debate in the House of Representatives about steel. He doesn't meet it at all, because in the Senate Senator Taft wrote in a very limited version of what should happen when a strike is enjoined. Because, Your Honor, the national labor policy of the United States—and we as free men are thankful that it does—protects the right to strike. We don't like strikes. But strikes are not a failure of collective bargaining. That is a new notion that has somehow arisen in this particular dispute. Strikes are part of collective bargaining, sometimes an undesirable part but sometimes a very necessary part. And as President Eisenhower himself well pointed out, there are worse things than strikes. And one of the things that is worse than a strike is the loss of freedom. And that is what we are talking about here in your courtroom today.

It cannot be described, as my friend did it, by saying all that the Government is asking for is mere restoration of the status quo for a temporary period. That is not what the Government is asking for. The Government is asking for this: This strike began on

July 11, after weeks of fruitless negotiations between the industry and the Union. The strike is now three months old. Hundreds of thousands, more than five hundred thousand, steelworkers have sacrificed hundreds of millions of dollars of wages, of their savings, in a fight for what they consider to be elementary economic justice.

Now, Your Honor, you don't have a right and the authority to decide the merits of that strike; but you are going to decide whether or not these steelworkers, against their will, should be forced to abandon this strike and return to work. And the consequences are very great, because this is not as even-handed as my friend would have it appear, because if an injunction is granted the strike will in effect be broken, the industry will be able to resume its work, the pipe lines will be restored, and a great economic advantage will be given to one of the adversaries against the interests of the other. And the whole essence of a strike in our national labor policy is that strikes should be permitted to exist so that there is an equality of bargaining power, so that economic forces can come into play, in the hope that these economic forces will bring a solution.

And what has impeded the settlement of this strike is the certainty on the part of the industry that at or about this time a petition would be filed and the provisions of this statute invoked. But they did not count upon one thing, the thing I started with. And that is that the nation is governed by laws, and that courts make the decisions. And decisions are not made on the findings even of Cabinet officers, well-intentioned as they may be, as to inconvenience and hardship to the nation—the words used by my friend—but rather by a federal court, appraising the language of the law and applying it so that equal justice will be accorded to all people.

Now, let us look at what Congress did. Congress said, as I pointed out to you, after debating it, that the nation's health or safety had to be involved, had to be imperiled. And let us look at the history of the prior national emergency injunctions. Let us see what happened.

This is the first controversy of a Taft-Hartley injunction involving a nationwide strike in steel. The first time that steel—the steel industry and the steel union—has been brought into a Taft-Hartley injunction proceeding. We had a little Atomic Energy case, not in the steel industry—so the court held—which involved the steelworkers' union, involving a small number of people. But this is the first time that the whole industry has been brought into question.

Let us look at the strikes where a national emergency provision was involved. And each one of them involved consderation of health or safety factors.

The coal strikes, about which references was made: The essence of the allegation of the Government in the coal cases was that we would not have enough fuel to heat the homes and to provide electricity for our people, a straight health and safety allegation. There is no allegation about economic inconvenience in those disputes. Let me point out something rather interesting. Many people have said there wasn't an emergency in coal, because the stock piles were sufficient. Some eminent public authorities have denied even in these cases that there was. But notwithstanding, the Government at least predicated its case upon these safety and health factors. But, Your Honor, I want to point out to you that the record shows that even in this situation, in 1950 a federal judge sitting in Washington refused to hold the miners' union in contempt under a Taft-Hartley injunction, because the Government didn't make a case, and three days later that strike was settled by the parties. There, too, they had relied upon an injunction, and a court of law deciding the issues decided that there had been no violation of the injunction, and the reliance therefore upon the legal process rather than upon collective bargaining collapsed and there was a settlement of that dispute.

The longshore cases: The longshore cases are filed and really not contested by the union, on the straight basis that it involves bringing food and necessary supplies into the country. That is the allegation. And on that basis the injunctions of longshore are not contested.

The third category, copper: Now, it is very interesting—and that will bring me to steel in '52—a copper national emergency injunction was brought, but it was brought in 1951, at the time of the Korean war, and the finding there was a straight finding that it was necessary for the prosecution of the war, where certainly the safety of the country is involved.

Your Honor knows from reading the newspapers, and the Government will not deny, that there is a great copper strike going on right now. The Government has not brought any suit. There is a plentiful inventory of copper. Copper is sold on the world market, some is imported. The country is getting along all right. The strike has gone on for many, many weeks.

And that brings me to steel in 1952. In 1952 there was a great steel dispute. It was also in the midst of the Korean war, and we had a wartime situation. And the steelworkers' union did not have to be enjoined in 1951 and '52. The President of the United States did not seek a Taft-Hartley injunction, and he didn't seek

it because the union voluntarily remained at work three—twice or almost three times the length of any Taft-Hartley injunction. And it was on that basis that the President of the United States refused to invoke Taft-Hartley against the steelworkers' union.

Yes, Congress did pass a statement about steel. But it is very significant as to what they did and what they did not do. They did not change the Taft-Hartley Act to mandate the President to use the Taft-Hartley injunction, although the President of the United States appeared before the Congress in joint session and told them why he refused to use it and told them also that if Congress wanted to mandate him they could just change the statute. This they did not do. They passed what was in effect a resolution, that it was the sense of the Congress that he should have used it.

Well, that resolution is like the opinion of the President. It was the sense and opinion of President Truman that the union had discharged its obligation to the nation.

And while I am on that subject, I must again correct my friend. When President Truman proposed a statute in this area, he did not propose that the injunction be invoked in cases involving the national interest. He proposed that the Railway Labor Act provisions be applied to these disputes. And the Railway Labor Act provisions do not contain provisions of this character, the Taft-Hartley injunction. The railway unions are free from the Taft-Hartley Act. What President Truman proposed was fact finding with recommendations, which is the essential feature of the Railway Labor Act—something which the union offered in this controversy but which the industry rejected.

Now, the fact of the matter is that we have a situation here where there is a great strike. It is a hard strike on steelworkers. It is a strike that is causing hardship to a few hundred thousand other workers. You must remember that when my colleague uses 750,000 as the figure of people affected by the strike 540,000 of those are steelworkers. And the question is a legal question, a straight legal question: Does it imperil, this strike, now or in the foreseeable future—imperil the national health or safety? What do we have? We have to analyze that very carefully.

The first thing, Your Honor, what is overlooked is that in the first six months of this year we produced about 70,000,000 tons of steel. The second fact to remember—that is in all the affidavits, including the Government's affidavits—is that 15.3 per cent of the steel industry is still operating, and many under extension agreements or contracts with the Steelworkers Union, and that 15 per cent of the steel industry produces 22,000,000 tons of steel a year. The plain fact of the matter is that between the steel already

produced this year and the steel that will be produced, if no injunction is issued, by the plants in operation we will have produced this year about as much steel as we produced in 1958. That is the fact which appears from both of our affidavits.

Where was the national emergency, in terms of Taft-Hartley, in 1958? Where was the national health or safety affected in 1958? There was a depression, people were out of work. But some of the people who filed affidavits here and who professed great concern about our present plight, advocated nothing to take care of the people who were unemployed in 1958. On the contrary, they took the position that the normal economic forces would redress themselves. And I am not saying that they were wrong in their prediction. If anything, personally I think they were wrong in not moving in fast enough. But normal economic forces did redress themselves.

So we have, on the affidavits before you, the production of steel equivalent to the production of steel last year, and the Government did not even venture to suggest that there was a menace to the national health or safety.

Now, they say that may be so, we can't say that we don't have enough steel, but important considerations are involved dealing with our health and safety. What are they? Well, let us see what some of the considerations are involved by these eminent gentlemen who are in the Cabinet.

The Secretary of Commerce files an affidavit, and he tells Your Honor what are the things that are involved in our health and safety. And one of the things he mentions that is going to be very detrimentally affected if you don't issue an injunction is that steel products will not be available for air conditioning in the month of October. This is in Mr. Mueller's affidavit as one of the elements which creates a problem to our health and safety. I happen to be old enough to have gotten along without air conditioning in the summertime, and I am sure the nation can get along without air conditioning in the winter months.

Now, the real nub of this matter, and the one that would concern us, is not matters like that that appear in the affidavits, but is our national defense affected? That is the nub of the situation. Is our national defense affected? There the safety of the country is involved. There the Steelworkers Union is just as vitally concerned as the Government, as it has demonstrated by its record throughout the years, on a question of that type. Let us look at the facts that appear in both our affidavits. Only one per cent of the steel in this country is used for national defense—only one per cent. And that one per cent is, I think on any fair reading of the affidavits, available to the Government in a variety

of ways which the Government has not utilized. And the proof of it is in the record made here in the affidavits by the Government itself.

The first is this: The Government can invoke its powers under the Defense Production Act. The Attorney General talked about that statute. That statute is not inferior to the Taft-Hartley Act. That statute was enacted after the Taft-Hartley Act. And likewise the Selective Service Act was enacted after the Taft-Hartley Act. The Taft-Hartley Act was enacted in '47, and the Selective Service provisions we are talking about in 1948 and the Defense Production Act in 1950. Under that statute the Government of the United States properly has the power, where it is required for defense, to freeze steel stocks, assert priorities, and allocate steel for defense purposes.

I want to say Your Honor, and the record shows this—that although in '56 in a strike which the Government did not—steel strike did not assert effect on the national health or safety, that power was invoked, I believe twenty days after the strike took place. This time the freezing of steel still has not taken place, and a very limited priority order was issued. And do you know, Your Honor, when it was issued? Mr. Mueller's affidavit is very illuminating, the Secretary of Commerce. It was issued on the day he signed the affidavit. He could not have signed the affidavit in good conscience without having used that power. And it was issued after I in my appearance before the Board of Inquiry—because I am not playing games with the Government, because of my great concern and the union's great concern with this matter—pointed out that the Government had not used the power to freeze, allocate and sequester steel for defense purposes. And all we get from the Attorney General is a statement "All this will be very hard, this will be very difficult, we will have to move in on the plants already in operation, we will have to insist that they supersede civilian production." I say that is much less interference than the concept of the Government of the United States asking Your Honor to take 540,000 people, against their will, and order them back to work. It is a much lesser exercise of power. And if it is a hardship to that part of the industry not on strike, it is a hardship which we should gladly pay and they should gladly pay for the defense of our country.

I want to point out something else to Your Honor. There is another provision of the law, same statute, and it says the President may seek agreements between industry and labor to assure the supply of essential steel. And we have an affidavit on file for the Steelworkers' Union that where the Government of the United States has sought our assistance in obtaining necessary defense ste

even out of struck plants, we have cooperated with the Government of the United States in this endeavor. And you have Mr. McDonald's affidavit that this is the policy of the Steelworkers Union.

(Change of reporters)

We have an affidavit, a letter on file, that Your Honor has read, from the Rear Admiral in charge of navy procurement, where he thanks this union for moving some of the steel, that the Attorney General talked about out of a struck plant, so the steel could be processed in the interests of the national defense effort.

And then we have the Selective Service Act provision, and the Attorney General says that this is a harsh provision.

Well, it is a harsh provision. It is a harsh provision to have a provision of law that says that the President of the United States can seize a plant if the plant can not produce steel needed for national defense.

But we are talking about a few plants. Isn't it a much harsher provision to ask a District Court to send 500,000 people back to work and put the whole industry back to work?

I want to make something clear. My friend mentioned *Youngstown vs. Sawyer*. I was in that case. That case did not challenge, and he didn't imply it did—I don't want to assume that—that case did not challenge this Statute. In that case, the President of the United States seized the whole steel industry under his implied powers and the Supreme Court held that he did not have those implied powers under the Constitution.

The court never questioned, and in fact pointed out, that this particular Statute exists where particular plants can be seized.

Now finally, and basic again to the interpretation of the Statute is this: Your Honor is asked on general affidavits to put back hundreds of plants, hundreds of mines, dozens of shifts, many many facilities, most of which have nothing to do with national defense, health or safety—nothing whatsoever to do with it.

You are not being asked and the government does not specify particular plants where the government says we must have this production of this plant so that the national defense effort shall not be impeded.

I don't think Your Honor has the legal authority to do what the government asks. The Statute doesn't say that you can put a whole industry back to work, because there are some plants in the industry which affect the national health or safety. The Statute doesn't say that at all. And maybe the Statute doesn't reach this type of situation at all. I don't think it does.

But the nation is not defenseless. It is not defenseless because we have other adquate statutes to deal with this particular type of

situation. For example, we get in Dr. Saulnier's statement, pointing out the horrible consequences of this situation, the fact that 23 rolling mills—I believe that is the correct number—are necessary and are not available in this situation. Twenty-three sounds like a lot. We had to file a rebuttal affidavit and Mr. Brubaker's affidavit points out to Your Honor that there are hundreds of rolling mills in the steel industry.

I misstated. It was 25 to 30.

There are hundreds of hot rolling mills in the steel industry, hundreds in that part of the industry which is presently operating and not on strike.

So we come to this conclusion:

The Government of the United States, properly concerned with hardship, just as we are all concerned with hardship—we are terribly concerned with the hardship of our own people and the hardship of a lot of other people—comes in to remedy that hardship by a writ of injunction, contrary to law.

That is not the way to remedy the hardship. The way to remedy hardships is to fulfill the law, to seek new laws. That is the way to remedy the hardship. Not to invoke laws which can not and do not, under clear congressional intent, apply.

And it seems to me, Your Honor, quite clearly and quite plainly, that in this situation, as it now stands and as it will stand for some time in the future, there is no imperiling of the national health or safety.

Now let's look at another factor. Dr. Saulnier, the Small Business Administrator, points out that the effects of this strike are serious for the economy as a whole. Of course they are serious. But what is the state of the economy as a whole? That is what we have to look at, fairly.

Notwithstanding the steel strike, the economy of America is at a very high level. It is booming along, far more than it did in 1958 far more. It is booming along at a great rate. It is true that a continuation of the strike will have harmful consequences. I don't deny that. But why does the government assume, and how can it assume, that if they follow the law and not invoke the injunction this strike will continue indefinitely into the future?

It will not continue indefinitely into the future. This strike, like all strikes, will come to an end. It has lasted too long. There is no doubt about that. Every union representative and every union member would subscribe to that point of view. And I would dare say that we will have a termination of this strike, if no injunction is issued, just as rapidly or almost as rapidly as the miners had it in 1950.

But with unemployment half what it was last year, with the economy in terms of national product away in excess of last year, it is not a proper presentation of the picture in the government affidavits to picture a state where the nation's health or safety is imperiled in the sense that the economy of the country is imperiled. That simply and plainly is not the case.

Now your Honor, I want to say a word about the government affidavits, again on the defense issue. You have read them. We have all read them.

I must say they vary in quality. When I said I did not object, I do not object to their going in. You will remember I added a careful caveat, "for what they are worth." I don't think the government's affidavits are worth too much, if I may say so.

Some are. The Atomic Energy Commissioner filed a straightforward affidavit in this case and he said that the Atomic Energy Commission had accumulated enough supplies of steel to take care of their requirements; they had some minor delays. I dare say that they have had more delays from legitimate strikes of the construction industry than they had from our strike in constructing facilities. And he said that they would begin to suffer if this strike went on to 1960.—Not now. Not next month. Not two months from now. But 1960. That was a straightforward affidavit.

We got an affidavit from the Space Agency. Now, as a citizen, I am as much interested as anybody in our keeping up and doing better than our enemies in the cold war, the Russians. And I have to explain to my boy, just as I am sure everybody else here does, how come we have fallen behind. And we can argue about that. But the Space Agency man who files an affidavit starts it and says that he is in charge of an agency that has nothing to do with military requirements, under the terms of his mandate.

What is the relevancy of that affidavit in our situation, then? We have a lot of ideas of how we can move that program ahead even faster than it is moving that have nothing to do with the steel strike, because that has nothing to do with our defense or our safety under the terms of the affidavit itself.

The Secretary of Defense's affidavit we take very seriously. The Secretary of Defense is charged with the responsibilities of maintaining our nation's defenses. But again, do we get a specification? Is the president of the Steelworkers Union told what plants they need steel from so that he and his board could put those plants back to work if they are really required, voluntarily and without forcing people back under an injunction, as the Defense Production Act contemplates he shall be told? Nothing of the sort. We got a general statement from the Secretary of Defense that we need steel and alloy steels for defense purposes.

Of course we need them. But I go back to the question I asked before. Why didn't the government freeze alloy steels? There is a lot of alloy steel being produced. Why didn't the government take alloy steel? Why did it wait until October 16, when it had to file an affidavit, not to freeze steel but in effect to say—and your Honor, I am sure, will read that order—when the plants go back to work then there will be priorities established.

Well, I think Mr. Meuller was presumptuous in concluding that the plants would go back to work under a court order. No court order had then yet been handed down.

Your Honor, it seems to me that on this issue the law is plain. The legislative history is plain. It is the Senate legislative history, not the House. The applicable statutes are plain. The applicable law is plain, because we come now to some elementary law.

That elementary law is this:

We are before you on a final hearing in this case—final hearing. This is our case. We have submitted it on affidavits. And the law on a final hearing of the case is that the government must prove its case, the plaintiff must prove its case by clear, convincing evidence—by clear, convincing preponderance of the evidence. That is the law.

And I say that the government has not sustained its burden in this case. It has not sustained it at all. It has not demonstrated that the national health and safety requires the drastic recourse of an injunction directed against the largest number of people that a court order would have ever been directed to in the history of our country.

I agree with my friend that this is the largest dispute which has ever been brought before a federal or any court.

Now, I want to pass on to the final point which the government did not advert to. They may want to say something about it later. That is the constitutional issue which I mentioned I would discuss. I want to tell your Honor the story of that.

I made that argument once before, unsuccessfully, in another court, in the Second Circuit, in a different case. Of course the law of that Circuit is not binding here and I think that case was erroneously decided. That is the *American Locomotive* case that my friend talked about.

First let me state what I think the legal principles are. They seem to me elementary principles of law and they seem to me important principles for this court to deal with.

The Taft-Hartley Act is a very peculiar Act when it comes to invoking the jurisdiction of the Federal Court in this type of controversy, because this controversy is not a controversy or a case at all, despite the fact that we make arguments at each other. Let me point out why it is not.

Under the Constitution, under Article III, Section 2, of course—something I need not say to Your Honor—the Federal Courts are limited to the judicial function of adjudicating justiciable controversies. As we lawyers say, there's got to be a case or a controversy before the court.

Let's see. Is there a case or a controversy here? Well, let's analyze it. I thought it was rather interesting—the first time I have seen it—that the Government's first paper filed with you is not a complaint. It is a petition. That is strange. The Rules of Civil Procedure require that the first paper filed in a lawsuit be a complaint. In fact, when I wrote some of this brief in preparing for this argument before the actual filing, because we saw what was coming, you will notice in part of my brief I referred to the Government's document as a complaint. But this is a petition. We don't even have a complaint.

That may be a technical matter, Your Honor. Your Honor could give them leave to amend it. But it is more than technical. It is symptomatic of the nature of this proceeding, because my friend was not acting negligently in entitling it a petition. He was following the Statute, which refers to "petition the court."

Now, what does the Statute say? The Statute says that when in the opinion of the President—opinion—and I notice now he concurs that that is opinion, not a finding—when in the opinion of the President the strike will imperil the national health or safety, he may appoint a board of inquiry, which he did. Then after the board of inquiry reports, the President may direct the Attorney General to petition any District Court of the United States having jurisdiction of the parties, to enjoin said strike or lockout, if the court finds that such threatened or actual strike affects an industry and if permitted to continue will imperil the national health or safety.

Then you issue an order that expires in ninety days, if you decide to issue the order.

Now, what is the case about? What is the controversy about? These are jurisdictional findings. In other words, you have jurisdiction, if you find that the national health or safety is involved, to proceed, and under normal circumstances then you would proceed in any case to a resolution of the issues of the case.

The issue of the case is not—we have argued on the jurisdictional point—is there a strike which will imperil the national health or safety? That is jurisdiction. I don't think you have jurisdiction. My friend thinks you do. All right, let's assume that you decide that against me for the moment. I hope you don't. You having decided that, what then do you try? What do you decide? What case or controversy is before you, jurisdiction being assumed?

We have no argument with the Government of the United States. We haven't transgressed any duty owing to the Government of the United States. We are conducting a legal strike. We have served the proper notices under the law. We have complied in all ways with the Taft-Hartley Act. No one has charged us with conducting an illegal strike. We have a dispute with the steel industry. We have no dispute with the Government of the United States. They are the plaintiffs. We have a dispute with the steel industry. That is an economic dispute. They haven't sued us, and so far we haven't sued them in connection with that dispute. We have a dispute, an economic dispute.

So what is Your Honor going to decide? Is Your Honor going to decide—there isn't any issue for you to decide. There isn't any case for you to decide, once you decide the jurisdictional point. There isn't any controversy for you to decide.

Now the courts have been very zealous about this—properly so. They have declined to give advisory opinions, because that isn't a case or controversy. They have declined to intervene in many areas because it isn't a case or controversy.

If there were some duty this court could assist, for example, the Labor Board, and does, in issuing subpoenas, but there there is a case and it is within the power of a court where there is a case—in other words, a duty violated or a right to be asserted—to participate in that process. But here no one can define what duty we violate in this case. In other words, no one can define an issue in this case other than a jurisdictional issue.

Now we think that constitutionally this Statute is invalid; under that section of the Constitution.

I want to say a word about the Second Circuit. We made that argument to the Second Circuit. The case in the Second Circuit mostly went on the question, as the Attorney General properly said, on whether that little atomic energy plant at American Locomotive was part of an industry itself, within the meaning of the Taft-Hartley Act. That was the major issue. We raised the constitutional issue.

The Court of Appeals said, in effect—just gave one sentence on it recognizing that there was no express duty violated in this Statute, said the court would imply a duty. We think that is a wholly erroneous decision. You do not imply duties in matters as grave and important as this.

Nor has the Attorney General at this moment suggested that we have been remiss in our performance of any duty owing to the Government of the United States, any legal duty. And our obligation would only arise, our duty would only arise—there is no duty. Up to this minute we have no duty to anybody that we have

not performed. We served the sixty day notice required by Taft-Hartley. We did all we were required to do. Our duty would only arise if you issued an injunctional order.

And it is settled law that courts do not create duties except incidental to the resolution of substantive disputes.

It is our clear opinion, that this law attempted to make the Federal Courts an instrument in the administrative handling of a labor dispute. And we do not think that the Federal Courts want to be used for this purpose. We do not think it is appropriate that they should act for this purpose. We do not think that Your Honor's order should be utilized in connection with the dispute between us and the steel industry. And we do not believe that the Government of the United States should ask a court for that purpose.

Now Congress might enact a law which would create a duty. That would be a different matter. Congress might say that it is our duty not to strike during a defined period, under certain circumstances. If we violated that duty, obviously, if they confer jurisdiction upon the Federal Courts, there would be a case or controversy within the meaning of the Constitution. But Congress has not said that. There is not a sentence, nd in my opinion, with due regard to the distinguished judges in the Second Circuit, not an implication of a duty contained in this purely procedural statute, which is regarded to be so procedural that I believe this is the first case where anybody even argued at length the jurisdictional health or safety factor. I think that is correct. In other words, it is looked upon as a procedural device in connection with a labor dispute.

In my judgment, that is not the purpose of the Federal Courts. In my judgment, it will be harmful to the interests of the enforcement of justice if the Federal Courts are utilized in this fashion, because the court is not adjudicating anything. The court is not deciding. The court is not dealing between contesting parties. We are only contesting jurisdiction. We are not contesting the merits.

And I do not believe that the Government of the United States would stand up here and say that the Steelworkers Union has violated any duty owing to the Government of the United States. The President has not said that to us on any occasion. And the Steelworkers Union record would not warrant any such statement.

It is for these reasons, Your Honor, that I respectfully submit that the petition of the United States for an injunction should be denied. It should be denied as contrary to law and contrary to the Constitution of the United States.

MR. BANE: The defendant employers will present no argument at this time.

THE COURT: Do you desire to be heard further, Mr. Doub?

MR. DOUB: I might call Your Honor's attention to just a few things.

Most of the argument of my friend, Mr. Goldberg, has been made at the wrong time and the wrong place. It should have been addressed to the Congress twelve years ago. Almost everything he said, if the court please, as to the undesirability of this proceeding being in a Federal Court or the undesirability of injunctions in labor disputes, or the contention that they don't ultimately settle anything, all those matters were matters more before the Congress, considered by the Congress and rejected by the Congress.

Actually, an injunction order in this case is double barreled. It requires not merely a suspension for a limited period of not exceeding eighty days, but under the order, at your determination issue this injunction we will submit to Your Honor, the order provides and requires both these powerful parties to this labor dispute to bargain collectively and to use every effort to solve the labor dispute. And it would be our hope that Your Honor will attach significance to that provision in considering whether in the future, during the eighty day period, it has been complied with.

Now, no one can prophesy whether this restraining order, if Your Honor grants it, will solve this labor dispute, and in solving it be detrimental to a settlement. All we can say is that it is a very interesting fact that in the thirteen times it has been invoked prior to the last few weeks, I exclude the dock strike in New York, in the thirteen times it has been invoked, in twelve of the thirteen cases the labor dispute was solved within the eighty days or within two or three days thereafter.

I say it is surprising because the criticism of the Act in the Congress seemed very logical, that a mere suspension of a strike for eighty days would not solve anything.

But, your Honor, there are other pressures upon the parties. There is the fact that if the strike resumes at the end of eighty days this problem becomes one for the Congress of the United States, and both parties must be cognizant of the very definitive possibility that in a strike of such national scope and national consequence, where the greatest interests of the country are involved, and of the government, there is always the possibility of legislation which might be far more restrictive of the free collective bargaining process than this Act.

Mr. Goldberg is correct, this is no more a proceeding against the union than against the employers. And I agree with him that the union has not violated or been remiss in any legal duty. But

legal right which makes this a case or controversy, as the Court of Appeals for the Second Circuit said—if your Honor concurs in the findings or opinions, as Mr. Goldberg would have it, of the President of the United States that the national health or safety is imperiled, then there has come into existence a legal right in the people of the United States to terminate temporarily, for an interim period, this dispute which has become no longer a matter of private controversy between private parties.

As a matter of fact, the statement was made by Mr. Keyserling and Mr. Goldberg that nothing was done by the government to meet the 1958 recession. Well, I could talk for a long time, your Honor, to show the many steps that were taken to stop and offset that recession: the easing of credit conditions, the acceleration of expenditures under federal construction and granting aid programs, the temporary extension of unemployment compensation benefits on a large scale, the step-up in defense activity and programs, to pick up consumption or demand for products.

As a matter of fact, those measures that were taken did assist in the ending of that temporary recession. It was said, "Why didn't you use Taft-Hartley?" Well, of course, Taft-Hartley wasn't involved at all.

Mention was made of one little item in an affidavit of the Secretary of Commerce. Everything that he said of great significance was ignored by my friend, Mr. Goldberg, except some reference to air conditioning. Well, all I can say is I think these important people negotiating for the union and for industry perhaps needed more air conditioning than they apparently had, in the last three months.

If the court please, we believe we have made out a case and we submit this injunction should be granted.

THE COURT: Do you desire to be heard further, Mr. Goldberg?

MR. GOLDBERG: No, thank you.

THE COURT: Have you submitted all the briefs you desire to submit?

MR. GOLDBERG: I believe I submitted to you, your Honor, my memorandum. I sent it back to your office.

Then I have a supplemental memorandum relating to the terms of my proposed order that you might be considering, which I think premature to discuss. But I will submit that, and I believe I have given copies to the parties.

Other than that, your Honor, I have concluded my presentation.

MR. DOUB: I would like to submit, if your Honor please, precisely the kind of an order which the government is seeking in this case, together with the requested findings which we believe are supported by the testimony.

THE COURT: Is it your desire to file requests, Mr. Goldberg, for findings?

MR. GOLDBERG: Yes.

THE COURT: When will you do so?

MR. GOLDBERG: Within what time would your Honor like me to do so? I will try to accommodate myself to your problems in this case.

THE COURT: I would like it just as soon as possible. How much time is really required?

MR. GOLDBERG: It would be very brief. I would need an hour or so to prepare them. I could get them over. Or by the morning.

THE COURT: If you would have your request in by morning it would be time.

The court will reserve decision until at least that.

MR. BANE: If the court please, we just received Mr. Goldberg's memorandum on retroactivity a few moments ago. Should that question become important, I believe we would desire to file a memorandum on the subject ourselves. We had not expected Mr. Goldberg's memorandum.

MR. GOLDBERG: It is true, Your Honor, I just gave that to Mr. Bane. I had assumed that perhaps we would want to discuss this problem when your Honor decided what kind of an order you wanted entered. I did not want to anticipate in any way whatever order your Honor might have in mind. This was done just for the purposes of acquainting all the parties with all ideas that we might have in the premises.

THE COURT: The matters just submitted were referred to, however, in your answer, were they not?

MR. GOLDBERG: They were. They were a matter referred to in the answer. That is correct.

THE COURT: In the light of the fact that it is a part of the answer, Mr. Bane, it would be highly desirable to submit certain requests in that connection.

MR. BANE: We will be glad to submit certain requests as early as sometime this evening, if your Honor desires.

I am not sure that the question of retroactivity will become important. It is in the answer as received today and we have had no time since the hearing started to prepare anything on the subject, but we do have some material we think would be useful.

THE COURT: It would be desirable to have that in my hands before ten o'clock tomorrow morning.

MR. BANE: We can do it very easily.

THE COURT: You also, Mr. Goldberg.

Court will now recess.

Court will reserve decision.

(HEARING CONCLUDED)

[Clerk's certificate omitted in printing]

AFFIDAVIT OF FREDERICK H. MUELLER SECRETARY OF COMMERCE

CITY OF WASHINGTON
DISTRICT OF COLUMBIA } ss:

FREDERICK H. MUELLER, being duly sworn, deposes and says:

As Secretary of Commerce I am making this affidavit on the basis of information obtained by the Department of Commerce in the performance of its function.

1. The iron and steel industry in our economy is a vast, widely distributed, complex of operations encompassing producers of iron ore, pig iron, steel ingots, and steel mill products. The companies that comprise this industry fall into four main divisions. Ten blast furnace companies produce pig iron and ferro-alloys for sale only. Twenty-four fully-integrated companies produce pig iron (generally from their own raw materials), steel ingots, and steel mill products. These fully integrated companies generally own and operate their own iron ore mines, coal mines, ore boats, limestone quarries, and part of their needed rail transportation facilities, although purchases of goods and service are made from independent companies as required. Fifty-eight semi-integrated companies produce steel ingots and steel mill products, but not pig iron. Over 250 non-integrated companies produce steel mill products which are made from purchased semi-finished or hot-rolled products. Some of the steel producing companies, along with many other concerns, operate fabricating facilities using the steel produced in the mills. These include shipbuilding companies, structural steel fabricators, steel drum plants, and companies producing galvanized steel products. The industry also produces by-products that are raw materials for use by other industries, such as the coal, chemical, and cement industries.

2. Steel plays a role in our economy and in our lives that is crucial in the most literal sense of the word. Indeed, the use of steel in our economy is so pervasive and important that our whole system of production and distribution and our national security, health, and safety are being seriously impaired by the prolonged interruption in its availability. It is used by every business and every family in the nation and is particularly vital to each of the military services. Annual consumption of steel is many times as great as that of all nonferrous metals combined. Nearly 20 percent of all steel products is used in construction and by contractors in the plumbing, heating, air conditioning, and related trades; some

thing over 25 percent is used in the production of transportation equipment, including automobiles, railroad equipment, ships and marine equipment, and aircraft; nearly 10 percent is consumed in the manufacture of machinery and industrial, commercial, and scientific equipment of various kinds; another 10 percent is used in the manufacture of containers of various types, many of which are used for food and medicines; about 5 percent is used in the manufacture of household appliances and furniture; and another 5 percent is used in agriculture and in the extractive industries, including mining, oil and gas drilling, and lumbering. The remainder is consumed in a variety of ways, including the production of ordnance and for military uses other than those covered in categories mentioned above.

The continuing availability of most of these steel supplies is vital to the nation's health and safety, used as they are for the production of personal necessities, including surgical instruments, heating and refrigeration equipment, and articles used in the preparation and preservation of food. Steel is also essential to transportation, to the production and transmission of light and power, to the provision of sanitation services, and in the construction and mining industries.

Steel products are made in a great variety of shapes, forms and analyses. For instance, flat rolled products are produced regularly in thousands of sizes varying in thickness from a few thousandths of an inch to 25 inches and in a vast variety of widths ranging up to 195 inches. Analyses also vary within the three groups of carbon steel, alloy steel, and stainless steel. In the last group alone there are over 35 distinct types. Some producers make a wide range of sizes but not of shapes and analyses; others a range of analyses but little variety in forms.

3. The defenses of the nation are particularly dependent upon an uninterrupted flow of steel for such uses as the building of missiles and launching sites, ships, tanks, aircraft and their engines, and atomic reactors for naval propulsion. Products of the iron and steel industry are indispensable in the manufacture of weapons and other items for the Department of Defense and the Atomic Energy Commission. The observations herein regarding the effect of a cessation of the steel strike on steel-consuming industries apply equally to the production of ordnance items and other military equipment and weapons. Certain items of steel required in the top priority missile programs are not made by any mill now operating, or available from any inventory or from imports. The Department of Commerce currently administers the priorities and allocations powers under the Defense Production Act for the purpose of insuring scheduled delivery of products and materials needed for defense programs. In response to Department of Defense requests for

in the procurement of items not currently being produced, the Department of Commerce has been unable to carry out its responsibility to be of assistance. It is clear that a continuation of the steel strike will lead to extended delays in military construction and production, including the missile and satellite programs.

4. Many exported products made of steel are vital directly or indirectly to our defense and security programs. Such products are necessary for the support of our bases overseas, certain direct shipments to our NATO allies and similar collective security groups, and are of major importance to the strength of the free world. The steel strike if permitted to continue will seriously impair our security and defense programs, thereby imperiling the national safety.

5. In all of its uses, steel is needed not only to meet the growth requirements of the economy but to keep the nation's exising stock of structures and equipment intact and in good working condition. Indeed, a large part of the current output of steel goes to meet replacement and repair needs. Thus, it is estimated that about 40 percent of the steel used in new residential construction is used in the production of dwelling units merely to replace those that have been abandoned or demolished, and that about 60 percent of the steel used in the production of railroad rolling stock and for rails and related articles is needed just to keep railroad services at an undiminished level. It is also estimated that 30 percent of the steel used in the making of household appliances and more than 50 percent of the steel used for producing industrial plant and equipment is for replacement purposes. In some of the most important uses of steel, e.g., in the production of containers for food and drugs, current needs must be met entirely out of current production.

6. The current strike of steelworkers, conducted on a national, industry-wide basis, has deprived the nation of at least 85 percent of its steel production. It has resulted in a production loss of far-reaching consequence. Production of steel ingots and steel for castings in the first and second quarters of 1959 was 30.5 and 32.8 million tons, respectively. Ingot production for the third quarter, i.e., July, August, and September, is estimated at 8.2 million tons, including pre-strike production for the first half of July. Steel production in the fourth quarter, if the strike were to continue throughout that quarter, would be approximately 4.5 million tons.

7. Steel production at this low level, as it has been for three months, is substantially below the level of current steel consumption. It is estimated that 6.6 million net tons of finished steel products—plate, sheets, tubing, wire, structural shapes, etc.—were consumed in the month of July 1959. In view of the fact that steel consumption in the first six months of 1959 is calculated at 37.9 million tons, an average of 6.3 million tons a month, and was about

6.4 million tons and 6.2 million tons in August and September, respectively, the July 1959 consumption of steel may be regarded as close to a normal rate of use when our economy is operating at its pre-strike level. However, owing to shut-downs and reduced operations in steel-consuming industries and businesses, many of which effects have already been caused by steel shortages, it is expected that steel consumption in the month of October will be reduced to about 5 million tons.

8. It has been possible for this disparity between current production and consumption of steel to continue for the past three months only because of the inventories of finished steel products that were on hand when the strike began. These inventories aggregated 24.8 million tons at the outset of the strike on July 15, 1959. It is estimated that they had dropped to about 10 million tons by October 15, 1959. Currently, inventories are declining at the rate of approximately 5 million tons per month. Inventories of finished steel, now down to some 10 million tons, are thus approaching the exhaustion point, since shortages of specific types and forms of steel will force dependent consuming plants and industries to cease steel consumption and related production, even though they have some inventories of steel remaining. There are only six steel plants now operating in the country having annual capacities of over 1,000,000 ingot tons. One of these is the Ford Motor Company Plant, which has a capacity of 1,898,000 ingot tons a year but is operating for the sole purpose of supplying Ford's requirements.

9. Imports of steel add only relatively small amounts to the supply of steel available for the United States economy. Historically, the United States has been a net exporter of steel mill products, but this situation has been reversed since December 1958. Still, for the first eight months of this year, total imports of 2.7 million net tons represented only 4.9 percent of the net new supply of steel products (i.e., industry shipment of steel products, plus imports minus exports), as compared with 2.9 percent in 1958 and 1.5 percent in 1957. Thus, foreign sources are wholly inadequate to sustain the needs of our economy. Additionally, they are concentrated in a relatively few shapes and forms with a very limited range of uses.

10. Separate and apart from the havoc that would be visited upon the various security programs, the strike, if permitted to continue, will result in serious damage to the domestic economy. A continuation of the steel work stoppage will have the ultimate effect of idling millions of workers and a large proportion of the facilities in industries dependent upon steel for their continued operation. Manufacturing industries directly dependent on steel mill products account for the employment of about 6 million workers, with wages and salaries totaling $34 billion at the pre-strike annual rate; and

products of these industries are valued at over $125 billion. Because the inventories of steel products in the hands of these manufacturers are now significantly below the level normally maintained to support production at current levels, it is clear that production schedules of steel-consuming industries, already seriously hampered, will be drastically disrupted in the near future. In fact, many manufacturers are rapidly approaching the point at which they will be unable to utilize their remaining inventories of steel because of lack of balance of individual shapes and kinds, each of which is needed to maintain a production operation.

Thus, if the stoppage of steel production continues, drastically reduced production accompanied by widespread unemployment is imminent in a major segment of the nation's economy. And even after steel production is resumed, there will be a considerable lapse of time before the output of steel can be raised to the extent necessary fully to alleviate the drastic dislocations of the nation's economy. It is estimated that the maximum rates of output, including the production of currently operating mills, that can be anticipated as steel production is resumed are as follows:

First week	45 percent of capacity
Second week	60 " " "
Third week	85 " " "
Fourth week	90 " " "

The effects of this lag in the resumption of full production will be further accentuated by a lack of balance among the forms and shapes of steel products that will become available.

Although some finished steel products can be expected to be shipped at the above rates after work is resumed, the flow through the raw material transportation and mining stages and through the melting and semi-finished stages must be considered. Failure to keep the process pipeline supplied would interfere with the process of rebuilding the presently inadequate steel flow. Again using one segment of the process as an example—iron ore available from all sources will, if transportation of lake ores is resumed even on October 20, be down to an estimated total of 10 million tons on May 1, 1960. For the same period in 1958 and 1959 such stocks of ore were 47.9 and 36.5 million tons, respectively. Since 13 million tons per month were consumed during the second quarter of this year, the inventory of iron ore—thus equivalent to less than a month's consumption—would most certainly develop shortages at some mill locations and interfere with production. Also, the simplest steel products require at least four to five weeks from melting to finishing. Allowing for transportation time and the necessary first attention

to defense needs and to the most urgent fabrication needs it will be several additional weeks before steel supplies will reach the general run of outlets in the distribution system.

The lack of an adequate supply of steel products will, as inventories are further reduced, progressively shrink operations in the whole range of manufacturing, construction, mining, fuels, transportation, and service industries. In our complex and highly interdependent economic system, a stoppage or reduction of operations in one basic segment of the industrial economy is soon reflected in many other segments. Adverse effects in one area of the economy are cumulative in their impact upon other areas, and accelerate as a work stoppage in a key industry continues. Because the principal steel-using industries are consuming inventories at an almost record rate the time is fast approaching when critical items of the inventory supply of numerous dependent industries and businesses will be suddenly exhausted. To the vast number of workers who will be affected in the manufacturing industries will be added millions of others employed in dependent and related industries. The employment of a large part of the remaining persons engaged in non-agricultural pursuits will be threatened and the basic industrial resources of the nation will be paralyzed.

11. Evidence of the impact of the steel shortage upon construction operations is mounting daily. Public projects are being adversely affected in increasing numbers, in some cases by delays in building schedules but in many cases by complete cessation of work. This affects projects of military construction, civil public works (including highways) and many private projects. For example, a survey undertaken during the week of October 11, 1959 revealed that, because of the steel strike, work has been stopped on highway and bridge projects in 14 states involving more than 80 million dollars; and work on reclamation and power projects in eleven states involving more than 28 million dollars has been stopped or delayed. In addition, necessary buildings for the nation's schools and dormitory programs, involving many millions of dollars, are being faced with severe curtailments.

12. On October 16, 1959, the Business and Defense Services Administration of the Department of Commerce issued an order that upon resumption of steel production immediate top priority must be given by steel producers to items required for use under the programs of the Department of Defense including missiles, launching sites and nuclear vessels. The order applied immediately to the comparatively small number of steel producers which have not been shut down by the strike. Although this order will enable the Department of Defense to obtain some needed items in connection with these programs, there are many items which are not carried in

inventory or produced by the plants still in operation and the order will only be a partial solution to defense needs.

13. For the foregoing reasons, it is my opinion that the aforesaid strike, if permitted to continue, will do irreparable damage to our foreign trade, to our domestic trade and to our defense posture. It will therefore seriously imperil the national health and safety.

Frederick H. Mueller

Subscribed and sworn to before me
this sixteenth day of October, 1959.
Leo L. Gerald
Notary Public

My commission expires November 30, 1963.

[Caption Omitted in Printing]

AFFIDAVIT OF THOMAS S. GATES, JR. ACTING SECRETARY OF DEFENSE OF THE UNITED STATES

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON } ss

THOMAS S. GATES, JR., being duly sworn, deposes and says:

I am the Acting Secretary of Defense of the United States and in such capacity I have knowledge or information on those matters which relate to the defense programs of the United States, not only in the Departments of the Army, Navy and Air Force but as well with respect to the coordinated defense programs of the other Departments and Executive Agencies and the recommendations of the Joint Chiefs of Staff. I am similarly familiar with the defense commitments of the United States with respect to allied and friendly nations and the programming of men and materiel required to fulfill the same.

In the performance of my duties, I am required to keep myself informed specifically on problems of procurement, production, distribution, research and development of weapons, arms, munitions, equipment and other logistic support of the military forces and the components thereof including the various types and forms of steel used in the production thereof.

I can state unequivocally of my knowledge that steel is one of the most essential elements in the national defense program of the United States and that beyond a certain point of delay in normal deliveries there occurs an irreparable injury to the national defense and consequently to the national safety.

In my opinion and in the opinion of those persons in the armed services who have the greatest knowledge of these matters, such a point has now been reached and any further delay in resumption of steel production would result in an unretrievable loss of time in the supply of weapons systems essential to the national defense plans of the United States and its allies.

Without attempting to undertake the impossible task of itemizing all of the delays which have been reported to me as being a direct result of the steel strike affecting the various plans which comprise our defense effort, the following examples will illustrate to the Court the irreparable injury which is now being done to the missile programs of the armed services which programs are among the highest national priority programs of this country.

Delays in the Ballistic Missile Programs of the Armed Forces

In current strategic concepts the intercontinental and intermediate range ballistic missiles are regarded as being primary weapons and play a major, if not the leading part in the basic defense plans of the United States. In general, each of the specific ballistic missiles comprises a part of a complex consisting of launching sites, supporting forces, and the actual weapon which, taken together, is considered as a weapons system. From the defense viewpoint all components of the system are essential to achieve effective utilization of the system.

Three basic ballistic missile weapon systems are the ATLAS, TITAN, and POLARIS. Of these the first two require land based launching sites involving both above and below ground facilities using large quantities of special steels.

The POLARIS weapon system includes not only the missile itself but, as well, a special design of nuclear submarine for launching. In the unique design of these weapons are the facilities which are required to make them operational. A significant portion of the steel specified in the procurement contracts is of a composition not common to commercial usage nor available from existing civilian inventories by exercise of allocation or eminent domain powers of the Government.

In addition to the necessity for special alloys and steel compositions, these programs in many cases require special sizes and shapes, many of which can be fabricated only by firms having a long experience in their production and the necessary special facilities therefor. In summary, the shortage of steel for the missile program is not a problem solvable by the mere exchange of other types and forms of steel available in inventories still existing for other purposes or in commercial stocks.

As a specific example of such requirements, the fabrication of the ATLAS missile requires the use of a specially processed stainless steel. The delay in delivery of this steel has now reached the point where for every further day of delay a similar extension of the presently programmed delivery dates will be required. In other words, the point has been reached in this program where the current schedule for delivery of these missiles cannot be met.

In connection with the TITAN missile, and equally affecting the ATLAS, there is a shortage of special steel required for pressure vessels containing the fuel which is transferred to the missiles at the launching site. The Army, which has the primary responsibility for this construction, advises that these vessels are a critical and controlling factor in fueling operational missiles for firing. Similarly, major launching site facilities now under construction for the

ATLAS and TITAN are today short of specialized structural shapes which are essential components and are required in large quantities. As a result of these two last shortages alone, delays in construction schedules of two to three months are anticipated at four major launching sites. Absent an immediate resumption of steel shipments, it is seriously to be doubted that any substantial recovery of this time can be made, and each day's further delay in receipt of these steels will mean a further delay of the completion dates called for by national defense plans.

In the POLARIS weapon system, the further production of an essential component of the missile is being stopped at two plants this week for lack of various gauges of alloy steel sheet and plate. Four others have given notice of being unable to continue beyond a few days more for the same reason. Taken as a whole, the program for the POLARIS missile is in danger of serious prejudice.

Also directly affecting the POLARIS weapon system is a shortage of special plate steel required to meet the construction schedules of the nuclear submarines now being built for the launching of POLARIS missiles. The same lack of steel has already caused the planned starting date of an additional nuclear submarine for this purpose to be put off. Other supporting elements of the POLARIS weapon system now at a critical point because of the steel shortage are the system's special transmitting facility and a number of the launching components.

The above are examples of specific delays now occurring or imminent. In my opinion and in the opinion of those charged with responsibility for the completion of these programs, the delays which have now occurred are only a foretaste of the increasingly greater delays to come if immediate resumption of work in the steel plants does not occur. The lag time to reach production, the further time required to transport the steel to the fabricator, and the delay occurring thereafter before delivery of the finished component creates a situation where the future scheduling of defense supplies is subject not only to existing but to future indeterminate delay.

The foregoing description of the effect on the missile programs is paralleled in many other areas of the national defense effort. For example, major work stoppages have already occurred in the construction for nuclear submarines; the naval shipbuilding program other than submarines, including new construction, modernization and conversion, has been affected by reason of the inability to secure boilers, compressors, and other component parts requiring steel.

The immediate release of items which may be wholly or partially fabricated, but are presently in struck plants, will offer but temporary relief in that it is vitally essential to the completion of these

programs as scheduled that an uninterrupted flow of steel be maintained.

Each day the strike continues will, in my opinion, add further examples of serious consequences to the shortages now existing and will adversely affect the national defense and imperil the national safety.

THOMAS S. GATES, JR

Subscribed and sworn to before me
this 16th day of October, 1959.

Douglas Hall

My Commission Expires December 29, 1959.

AFFIDAVIT OF JAMES P. MITCHELL
SECRETARY OF LABOR

CITY OF WASHINGTON
DISTRICT OF COLUMBIA } ss:

JAMES P. MITCHELL, being duly sworn, deposes and says:

1. As Secretary of Labor, I am making this affidavit on the basis of information obtained in the performance of my functions.

2. The labor dispute between the United Steelworkers of America and certain steel companies, which has continued for more than three months, is upon a National basis, having resulted in the shutdown of 310 steel plants, 118 iron ore mines, and 11 transport facilities located in 32 States and extending from the Eastern Seaboard to the West Coast. The production of steel constitutes one of the largest single industries in the United States and the value of its products is greater than the value of all other metal products combined, the net billings of steel companies exceeding $12 billion in 1958. The basic steel industry has over 600,000 employees, and there are 35,000 workers employed in iron ore mines and over 5,000 in Great Lakes shipping which serve the steel industry.

3. The immediate impact of the strike was upon the approximately 500,000 employees of the steel companies organized by the United Steelworkers Union, who have been on strike since July 1.

4. In the first two weeks of the strike approximately 100,000 additional workers, most of them railroad employees and coal miners, were laid off as a direct result of the steel strike.

5. By the third week in September additional employees were being laid off at the rate of almost 10,000 per week as a direct result of the strike.

6. Toward the end of September and early in October, as shortages of certain types of steel became acute, layoffs mounted rapidly and about 57,000 are reported laid off in the week ending October 11. Extensive additional layoffs to take effect later in October and November have been announced by the automobile industry. Further layoffs in industries using steel in a variety of ways in the manufacture of machinery, home appliances, and many other metal products, and in construction, are now anticipated in the very near future. Scheduled layoffs, as now reported to employment offices throughout the country, indicate that by the end of October approximately 365,000 workers who are not on strike will have been laid off as a direct result of the strike.

7. As of October 11th, an estimated 780,000 workers were unemployed, including those on strike, as a direct result of this strike. If the strike should continue, the total number made idle is expected to reach approximately 1,775,000 by the end of November and about 3,000,000 by the end of December. Even if steel production

were to be resumed immediately, there will be considerable delays in providing the necessary steel to all users, so that there will be further layoffs until missing components for assembly lines are replenished.

8. As a direct result of this strike, it is estimated that 2,100,000 Americans—the strikers, other workers laid off because of the strike, and members of their families—are adversely affected. Should the strike continue, it is estimated that 5,325,000 people would be affected by it by the end of November and 9,000,000 by the end of December.

9. Wage losses of the striking workers themselves already amount to about $790,000,000 and the wage losses of the non-striking workers laid off as a direct result of the strike already amount to about $160,000,000.

10. Should the strike continue, it is estimated that total wage losses to American workers—including both strikers and other workers idled as a direct result of the strike—would be $1,850,000,000 by the end of November and about $2,800,000,000 by the end of December.

11. Over 110,000 workers idled by the steel strike had applied for unemployment insurance benefits through the week of October 7, including more than 50,000 railroad workers and 90,000 workers in other industries. Claims for unemployment insurance are now increasing very rapidly.

12. Many of the families of workers idled by the strike have now exhausted their savings, have used up their credit, and are in distress. In the State of Pennsylvania, in which one-third of the steel industry is located and over 230,000 employees had been idled by the strike in mid-October, many families are being added to the public relief rolls every week. By the end of the 13th week of the strike, Pennsylvania State officials reported that the number of families found eligible for public assistance because of the strike exceeded 17,000. As a result of the strike, there were 213,000 additional participants in the surplus food distribution.

13. As a direct result of the ever-widening effects of this strike upon business and employment in industry and commerce, the economic health of the Nation is being endangered.

14. For the foregoing reasons, it is my opinion that this strike will, if permitted to continue, seriously imperil the National health and safety.

James P. Mitchell

Subscribed and sworn to before me
this 17th day of October, 1959.

Marguerite Connors
Notary Public

My commission expires May 31, 1963.

AFFIDAVIT

DISTRICT OF COLUMBIA ss:

I, Hugh L. Dryden, being first duly sworn, do hereby depose and say:

1. I am the Deputy Administrator of the National Aeronautics and Space Administration of the United States Government with headquarters at 1520 H. Street, NW, Washington 25, D.C.

2. The Deputy Administrator of the National Aeronautics and Space Administration, pursuant to subsection 202 (b) of the National Aeronautics and Space Act of 1958 (Public Law 85-568), performs such duties and exercises such powers as the Administrator of the National Aeronautics and Space Administration may prescribe, and acts for, and exercises the powers of, the Administrator during his absence from the headquarters of the National Aeronautics and Space Administration. The Administrator of the National Aeronautics and Space Administration is absent from the headquarters of the National Aeronautics and Space Administration on this 11th day of October, 1959, and, by virtue of that fact and the provision of law cited in the preceding sentence, I am presently acting for and exercising all the powers of the Administrator of the National Aeronautics and Space Administration.

3. The National Aeronautics and Space Administration is an agency of the United States Government established by the National Aeronautics and Space Act of 1958 (Public Law 85-568), and is responsible by the terms of that Act for planning, directing, and conducting "aeronautical and space activities" sponsored by the United States, except that such activities "peculiar to or primarily associated with the development of weapons systems, military operations, or the defense of the United States" are the responsibility of the Department of Defense. The term "aeronautical and space activities" is defined in section 103 of the National Aeronautics and Space Act of 1958 as meaning "(A) research into, and the solution of, problems of flight within and outside the earth's atmosphere, (B) the development, construction, testing, and operation for research purposes of aeronautical and space vehicles, and (C) such other activities as may be required for the exploration of space."

4. The program of space activities for which the National Aeronautics and Space Administration is responsible includes as four of its principal elements the following: (1) Project Mercury, the nation's manned satellite program, which shares the highest national priority along with the ballistic missile programs of the Department of Defense; (2) development of a single-chamber rocket

engines using liquid fuel, capable of generating a million and a half pounds of thrust, under contract with North American Aviation, Inc.; (3) development of a large space vehicle, Project Vega, under contract with the Convair Division of General Dynamics Corporation; and (4) applied research in aerodynamics and propulsion to advance the science and technology of space flight for both civilian and military purposes. All of these elements contribute importantly to the security interests of the United States.

5. In the course of my duties, I have acquired comprehensive and detailed knowledge of the program of space activities of the United States Government, and I have received regular and periodic reports concerning the rate of progress of the various projects which compose that program. As the result of information which I have thus received, it is my opinion that the current strike affecting the steel industry has had an adverse effect on accomplishment of the presently planned program of space activities. This opinion is based upon the specific examples described in the following paragraphs.

6. The planned completion date for the construction of the Central Flight Control and Range Operations Building at the Goddard Space Flight Center, Greenbelt, Maryland, is estimated to have been delayed about 7 weeks by continuation of the steel strike to the present time. Continuation of the steel strike will cause further delay in completion of this facility, which is essential to the operation of Project Mercury and will make impossible the restoration of the original completion date. All tracking data will be routed to this communication and computing facility, where it will be processed to provide real time (i.e., immediate) predictions of anticipated trajectory. This information will be transmitted to the Atlantic Missile Range control center where it will be used as the basis for decisions regarding abort of the vehicle during launch, initiation of reentry, and the direction of the recovery operations.

7. In connection with the development of the million-and-a-half pound thrust engine, two vital test facilities are presently under construction. Test stand 2 A, located at Edwards Air Force Base, California, and test stand Bravo 2, located at the Santa Susana facility of North American Aviation, Inc., in California, are to be used, respectively, for thrust chamber testing of the engine and testing the turbo pump, a vital component of the engine. The construction of these facilities requires special steel plate. The plate is needed immediately, yet deliveries are unobtainable because of the strike. If the strike were ended immediately, some delay would nevertheless be experienced in obtaining delivery of the required plate.

8. Completion of a Hypersonic Continuous Flow Facility under

construction at the Langley Research Center is being delayed because the contractor fabricating the test sections is on strike. The test sections would have to be delivered in January, 1960, in order not to cause delay in the planned completion date of the facility. If the strike were ended immediately, a delay beyond January, 1960, in delivery of the test sections is now anticipated. This facility is urgently required for work in high Mach-number speed ranges. Boosters and ballistic missiles and space vehicles leaving the earth's atmosphere, and vehicles entering the earth's atmosphere from orbits of the earth or interplanetary flight will experience extremely high temperatures and heat transfer rates at speeds between 5 and 25 times the speed of sound. The critical heating condition for these vehicles is not a fixed one, because it will occur at different speeds for different types of vehicles and operating conditions. The heating and forces which these vehicles experience are formidable basic problems requiring extensive detailed investigation. At present the National Aeronautics and Space Administration has no facility for the Mach 7 to 12 speed range that is suitable for the required research and development.

9. There are several situations in which elements of the NASA program will be adversely affected if the strike continues:

Steel in the form of billets to be used in development of the Vega space vehicle is on order from the steel mills but cannot presently be delivered. These billets, upon delivery, must be sent to a rolling mill for work. The lead time for these items is such that any delay in the delivery of the billets after November 15, 1959, will result in a corresponding delay in the Vega schedule.

Each of the NASA research centers, or laboratories, uses various types of steel such as stainless plate steel, bar stock, et cetera. While the Centers endeavor to maintain such items in stock, their supplies are being reduced by normal operations and there may be steel items required for equipment fabrication or repair within 30 to 60 days from now which at that time may not be available from stock or obtainable from commercial sources. Such shortages may impede aeronautical and space research work being carried on at the Centers of great national importance to both civilian and military programs.

Stand 1-A is located at Edwards Air Force Base and is to be used in testing the complete million-and-a-half-pound thrust engine. The stand requires structural steel for the development of its superstructure. This item is not critical at this moment; however, if the delay caused by the strike continues for more

than 30 days from this date, a delay in the engine program will result.

Further affiant sayeth not.

Hugh L. Dryden
Deputy Administrator
National Aeronautics and Space Administration

Subscribed and sworn to before me, a notary public for the District of Columbia, this 14th day of October, 1959.

Patrick A. Gavin
Notary Public

My Commission expires
December 14, 1961

AFFIDAVIT

DISTRICT OF COLUMBIA
CITY OF WASHINGTON } ss:

A. R. Luedecke, being duly sworn according to law, upon his oath deposes and says:

1. I am General Manager of the Atomic Energy Commission. As such, under the Atomic Energy Act (42 USC 2011 et seq), I am the chief Executive Officer of the Atomic Energy Commission (42 USC 2034) and by reason thereof and the directives of the Commission, I discharge the administrative and executive functions of the Commission. The Chairman of the Commission and a quorum of the members of the Commission are presently absent from the headquarters. I make this affidavit on the basis of information obtained in the course of my official duties in the program of the Atomic Energy Commission.

2. The program of the Commission is devoted to both the military and civilian uses of atomic energy. In this connection the Commission is responsible by law for the operation of a large industrial complex located in over half of the States of the Union, operating currently on an annual budget of over two-and-one-half billion dollars. For both the national defense and other purposes, the production program of the Commission provides the special nuclear material essential to the making of atomic weapons and the operation of nuclear reactors; and as an integral part of its programs the Commission conducts or financially supports a wide and costly variety of research and development involving weapons, reactors, special nuclear material, isotopes, thermonuclear devices, and more.

3. Continuity of operation of the Atomic Energy Commission's programs is essential to the national defense. The Commission or its contractors have had on hand or procured sufficient supplies so as not to have been materially affected by the steel strike in construction or repair projects, up till now. However, the strike has already produced delays, so far of a minor nature, in nine military or civilian projects located in California, New Mexico, Nevada, Ohio, New York, and Idaho; and should the strike continue unabated, it would induce a spreading slow-down in construction projects resulting in irretrievable delay. Under present schedules there would be delay in availability of some new facilities for use in the reactor research and development program and there could be delay in the scheduled completion and start-up of the new production

reactor at Hanford. If the strike continues into early 1960, there would be an appreciable effect upon the weapons program.

V. R. Luedecke
General Manager
Atomic Energy Commission

Sworn to before me this
10th day of October, 1959.

E. A. Treacy
Notary Public

My Commission expires Jan. 14, 1964
(SEAL)

[Caption Omitted in Printing]

CITY OF WASHINGTON
DISTRICT OF COLUMBIA ss

WENDELL B. BARNES, being duly sworn deposes and says:

FIRST: He is the duly appointed Administrator of the Small Business Administration, an agency of the Government of the United States, established under and pursuant to the Small Business Act, to aid, counsel, assist and protect the interests of small business concerns in order to preserve free competitive enterprise and to maintain and strengthen the over-all economy of the Nation. In the performance of his duties the Administrator is required to be informed on general economic conditions and on economic conditions that affect the competitive position of small business concerns.

SECOND: In the United States there are approximately 4,500,000 business enterprises. About 4,300,000 of these are small business concerns under the definition of small business promulgated by the Small Business Administration. It is estimated that small concerns provide employment for as many as 30,000,000 persons. Small manufacturers employ approximately 6,000,000 of these 30,000,000 persons.

THIRD: Many small business concerns are engaged in occupations directly related to the national health and safety. During the fiscal year ending June 30, 1959, defense procurement contracts totaling $8,457,000,000 were awarded directly to small concerns. In addition, many small firms are defense subcontractors under defense contracts awarded in the first instance to enterprises that are not small under the Small Business Administration's definition of "small business." During fiscal year 1959, these military prime contracts totaled $45,900,000,000. Although the dollar amount of these defense contracts, which were placed with small business concerns as subcontractors is not available, it is estimated that nearly 50 percent was performed by small concerns. In addition, small firms are heavily engaged in defense supporting activities and in essential civilian occupations.

FOURTH: A substantial number of the 4,300,000 small business concerns are directly or indirectly dependent upon an adequate supply of steel or steel products. Of approximately 315,000 small manufacturers as many as 50,000 are believed to be engaged in the fabrication of steel into a variety of products. These enterprises are directly dependent upon an adequate supply of steel. The remain-

small manufacturers also are directly dependent upon the adequate production of steel and steel products to the extent that their products cannot be manufactured without some steel component. For example, a product made of wood may have certain steel components; a fiber tube may require metal ends; or a food manufacturer may be dependent on steel cans. And every manufacturing concern, regardless of size, relies on steel through its use in the construction of plant, machinery, tools and other equipment. Thus, steel is directly required by most small manufacturers. Apart from this direct dependency upon steel, shortages of this essential metal indirectly affect small manufacturers when their customers cancel orders because they, in turn, are unable to obtain steel necessary to continued production.

FIFTH: Almost 1,000,000 small enterprises are engaged in non-manufacturing occupations. These include firms engaged in the service trades and in the retail and distribution fields. While most of these companies are not directly dependent upon steel and steel products inventories, virtually all of them employ physical facilities and equipment in which steel is used. In addition, they are adversely affected when they cannot obtain the products they distribute or when their customers are adversely affected by the steel strike. At this time over 500,000 steel workers and about 250,000 workers in related industries have been deprived of their usual means of support by the steel strike. As a result, the many smaller firms in the retail and service trades which are dependent on these workers for patronage, are adversely affected by the steel strike.

SIXTH: The small business segment of the economy is more vulnerable than the larger companies to the effects of a prolonged steel strike because they are more severely affected by fluctuations in the business cycle. Statistical evidence demonstrates that their profits are more volatile. The national economy is now experiencing a recovery from the 1957-58 business recession; and smaller concerns have been sharing in this recovery. Insofar as the steel strike impairs this recovery, small businesses, with their limited resources will be more affected than are larger enterprises. In addition, the prolongation of the steel strike has a disproportionately adverse effect on small concerns because of their inability, as compared with the larger companies, to prepare for the strike. Many manufacturers acquired substantial inventories of steel in anticipation of the strike; but, proportionately, small manufacturers stockpiled steel to a far lesser extent than large manufacturers. They do not have the resources to hold inventories of materials long in advance of the time they will be needed. They lack the necessary reserves of cash and the credit facilities available to larger firms, and they do not in any case have the warehouse facilities required for storing ab-

normally large inventories of steel. It is clear, therefore, that a lengthy steel strike will have not only a very seriously adverse effect upon the small business segment of the economy but this effect will be much more severe upon small firms than upon their large competitors. As a result, a prolonged steel strike will seriously weaken the ability of small concerns to compete and consequently cause the economy of the nation to suffer.

SEVENTH Within the past few days a survey of trade associations and small businesses was made by officials of the Small Business Administration. This survey consisted of a canvass of the principal executives of approximately 60 small business manufacturing concerns using steel and 10 trade associations whose members use steel and are predominantly smaller concerns.

EIGHTH Although the survey disclosed that on October 1, 1959, most small business concerns had not as yet been seriously affected by a shortage of steel, it indicated that if the strike should continue for an additional 30 days the business activities of a substantial number of small manufacturers and small construction firms will be curtailed and their employment reduced by 25 percent. If the strike continues 60 days, the survey indicated that a substantially greater number of small businesses would be affected and for many a 50 percent lay off will follow. It was revealed by the survey that should the strike continue for 90 days the vast majority of small manufacturers and small construction firms will be forced to close.

NINTH While serious effects of the strike have not yet been felt by most small business concerns, the survey indicated that their inventories of steel are rapidly diminishing and in some cases are now exhausted. A substantial number of small business concerns that have sufficient steel inventories to carry them for 90 days nevertheless will have to shut down prior to that time because certain necessary components made by other firms will not be available as their markets will have disappeared because of steel shortages in other industries.

TENTH The survey also showed that a further adverse effect of the steel strike beyond the effects evident today and it will increase if the strike is prolonged, is the increased cost to small business of available steel. Instead of using steel that is normally supplied directly by the mills, many small firms must buy steel through warehouses to continue operation and in so doing incur additional costs for locating and shipping steel. Obtaining steel from these sources also involves an increased scrap loss and the necessity of substituting available heavier or more costly steels to replace normal steel supplies. Some small firms are purchasing foreign steel.

premium price. This increase in cost is particularly detrimental to the many small businesses which must operate on a high material cost and at a low margin of profit. Their ability to compete will be undermined by a prolongation of the steel strike.

ELEVENTH The survey disclosed a number of industries which are now seriously affected by the shortage of steel. These include the manufacturers of ducts and fittings, light metal door and frame manufacturers, prefabricated building and subassembly fabricators, trailer manufacturers and steel shelving and cabinet manufacturers. Firms in all these groups have indicated that their operating inventories have been almost completely consumed. These industries are encountering difficulties in substituting the warehouse steels that are available for the steel formerly supplied by the mills. The activities of some of these companies are substantially curtailed today and it is anticipated that they will be closed down completely within 15 to 30 days.

TWELFTH The plants of many small businesses are located in smaller communities and for these plants to shut down will have as serious an economic effect in those communities as will the closing of mills in the major industrial centers. In addition, small service businesses depending on maintenance, repair and other service work in the area of closed plants are seriously affected.

THIRTEENTH According to the survey a secondary effect of the general shortage of structural steel has been to curtail both the activity of concerns that produce items used in building construction and the activities of small contractors in the building trades. Another secondary effect is that small manufacturing concerns which extend credit to their dealers based on the normal extension of credit by those dealers to their customers are encountering difficulty in obtaining payments from dealers located in areas where plants have been closed because of the steel strike.

FOURTEENTH It is clear that the steel strike and the consequent curtailment of steel supplies is adversely affecting many small businesses and is significantly weakening the competitive position of these concerns. While it appears that at the time of the survey the number of small companies completely without the steel products necessary to their operation is relatively small, their inventories are seriously depleted. If the steel strike were to end promptly, it is estimated that material to replenish inventories would not be available from regular sources for a period of 4 to 6 weeks. During this period many if not most small business concerns will be compelled to resort to higher cost steel to the extent that it is available. This serious hardship cannot be avoided by an immediate termination of the strike. On the other hand, a continuation of the steel strike

will tend to proliferate and intensify the adverse effects upon the smaller concerns and upon the national economy that are discernable today. Business concerns will close down and their workers will be laid off because of the lack of steel. The cost of doing business will continue to advance because of the lack of steel. The customers of smaller concerns will disappear because of the lack of steel. Accounts receivable will be unpaid and financing problems will multiply because of the lack of steel, and because of the inevitable layoff of hundreds of thousands of workers. Many smaller concerns will not recover from the setbacks caused by the steel strike. Many others will feel for a considerable time, measured in years rather than months, the effects of the steel strike. It is inevitable that continuation of the steel strike will seriously and in some instances permanently undermine the ability of small concerns to contribute to the national economy.

FIFTEENTH: The Congress of the United States has determined in section 2(a) of the Small Business Act, that the economic well being and security of the nation are dependent upon the capacity and development of the small business enterprises. It is inevitable if the steel strike continues or if the production of steel is not resumed promptly that the strike will seriously endanger the economic health of the nation and imperil the national safety and health.

WENDELL B. BARNES

Sworn to before me this
15th day of October, 1959.
Mary A. DiDio
NOTARY PUBLIC
My Commission Expires Sept. 30, 1964

EXHIBIT

AFFIDAVIT OF HOWARD G. FREAS, MEMBER, INTERSTATE COMMERCE COMMISSION

UNITED STATES OF AMERICA
DISTRICT OF COLUMBIA ss

Howard G. Freas, being first duly sworn on oath deposes and says:

He is a member of the Interstate Commerce Commission and is responsible for the supervision of the Bureau of Safety and Service of the Commission. This Bureau administers the car service functions of the Commission as set forth in paragraphs 10 to 17, inclusive, of Section 1 of the Interstate Commerce Act, as amended. As such Commissioner, he is the delegate of the President, the Director of the Office of Civil Defense Mobilization, and the Commission, under the authority of the Defense Production Act of 1950, as amended, with respect to domestic transportation, storage, and port facilities, but not including air transport, pipe lines, coastwise, intercoastal, and overseas shipping. As such Commissoner and delegate, he maintains his office in the City of Washington, District of Columbia. In his official capacity he has received reports and information with respect to the impact upon the various segments of domestic transportation of the work stoppages that have existed since mid July, 1959, as a result of certain labor disputes between certain corporations or organizations in the United States producing or fabricating steel or the components thereof and certain of their employees, represented by the United Steel Workers of America, A.F.L.-C.I.O.

Principal sources of iron ore for the steel mills which are idle as a result of said labor disputes are located in various mountain ranges in the vicinity of Lake Superior. The great bulk of iron ore shipments from this region is transported over the Great Lakes in freighters primarily designed and constructed for this movement. As a result of said labor disputes there has been a cessation of this particular traffic. At present, 205 bulk freighters under United States registry, which are normally engaged in iron ore traffic during the navigation season on the Great Lakes, are immobilized. Seventy-one of these vessels are still under load. The combined carrying capacity of the immobilized fleet approximates 2,600,000 gross tons. As a result of the cessation of the movement of Lake Superior iron ore last July, approximately 7,200 officers and men have been given indefinite furloughs. Towboat operations at United States ports on the Great Lakes have been substantially reduced. Revenues from

such operations are reported at less than 50 per cent of normal. The reduction in operations has resulted in the lay-off of about 15 crews involving about 60 officers and men. With the advent of winter weather conditions on the Great Lakes, a resumption of the iron ore movement would involve longer turn-around times for the ore carriers and lighter loads. The current navigation season on the Great Lakes is expected to extend to about December 1. Railroad facilities available for the movement of Lake Superior iron ore to steel mills in the United States represent a small fraction of the capacity of the Great Lakes fleet of ore carriers under U. S. registry. Moreover, the transportation of Lake Superior iron ore by rail in winter time is attended by operating difficulties which lengthen the turn-around time of freight cars used in this service. These operating difficulties arise from the circumstance that under winter conditions the iron ore freezes and thus requires the use of heating devices for both loading and unloading. Another circumstance affecting the movement of iron ore by rail is that the steel mills located at lower lake ports are not equipped to receive iron ore by rail.

Railroad carloadings have declined substantially since mid July, particularly with respect to commodities which relate directly to steel production. Ore carloadings during the 11-week period ended October 3, 1959 totaled 111,945, as compared with the carloadings of ore for the preceding 11-week period ended July 18, 1959, of 1,246,412—a decline of 1,134,467 carloads. Carloadings of coke during the latter period declined 76,380 as compared with the earlier period. Coal loadings showed a slight increase of 35,094 carloads during the latter 11-week period. This figure does not reflect, however, the number of carloads of coal which would have moved over the Great Lakes to upper lake ports had bulk freighters been available for the movement. To illustrate, during the 11-week period ended October 3, 1958, rail carloads of coal totaled 1,246,322, as against 1,097,278 carloads during the similar period in 1959, or a decline of 149,044 carloads. Carloads of miscellaneous freight, which included finished steel and products manufactured with steel, declined 514,324 during the 11-week period ended October 3, 1959, as compared with the 11-week period immediately preceding. A reasonable estimate of the decline in rail carload traffic in the four categories above-mentioned for the period July 15, 1959 through October 10, 1959 would appear to be about 1,960,000 carloads. Railroad sources estimate the loss of carload traffic in these categories during the period mentioned at 2,010,000 carloads and revenue loss at approximately $480,000,000.

Railroad employment in 1959 reached its peak in June when there were 850,923 employees. It declined to 797,195 employees as

of September 15, a new all time low level. Current official employment figures are not available but railroad sources report that at the present time the number of employees laid off by reason of the decline in traffic approximates 60,000.

During the period above discussed there has been a decline in the number of serviceable freight cars. For instance, serviceable freight car ownerships as of July 1, 1959, were 8,513 greater than on September 1, 1959. This trend has continued since September 1st. The greatest decline in serviceable cars has occurred in the hopper car supply, which is of particular interest to producers of steel. Carriers serving the principal steel areas east of the Mississippi River own and use the majority of hopper cars (80.2 percent of the total hopper car ownership). These carriers have been seriously affected from a revenue standpoint by the great reduction in traffic incident to the severe curtailment of steel production. Their fleet of hopper cars has greatly deteriorated—45,397 cars or 11.2 per cent of their ownership are reported in bad order. This percentage of bad order hopper type cars may be compared with the over-all percentage on all types of rail freight cars which currently is about 8 percent.

Car installations during the period under discussion have remained fairly constant at about 5,000 cars a month, but orders for new freight cars have progressively declined through July and August from the number ordered in June 1959. These figures are: June 8,051; July, 1,159, and August, 1,753. September figures are not at present available.

Thousands of cars of coal are at present immobilized in rail yards in the vicinity of coal mines. Holding coal cars under load results in deterioration in the cars and the longer the coal is held in the cars the greater the deterioration. This creates a situation where many cars so held will probably require shop attention before they can again be utilized for loading. With colder weather approaching, there exists the probability that some of the materials now loaded in cars may require thawing before efficient unloading can be accomplished. Not infrequently damage occurs to railroad equipment in the heating and thawing processes and many cars, as a result, may be taken out of service temporarily to repair such damage.

He is of the opinion that the existing work stoppages in the steel industry, if permitted to continue, will result in further furloughing of railroad employees, will increase at an accelerated pace the decline of railroad traffic, will increase the number of unserviceable freight cars, will increase the severity of freight car shortages when the steel strike has been terminated, will result in further reduction in orders for new freight cars, and will seriously affect the revenues of the carriers and impair their ability to continue to provide

needed public service. He is of the further opinion that the well-being of the Nation is such that the impairment of its public transportation system will inevitably imperil the national health and safety.

Howard Freas
Commissioner,
Interstate Commerce Commission

Subscribed and sworn to before me
this 16th day of October, 1959

Harry R. Deale, Notary Public
(SEAL)

My commission expires July 15, 1962.

AFFIDAVIT OF CLARENCE G. MORSE
MARITIME ADMINISTRATOR
CHAIRMAN, FEDERAL MARITIME BOARD

UNITED STATES OF AMERICA
DISTRICT OF COLUMBIA } ss

I, Clarence G. Morse, being first duly sworn, do hereby depose and say:

I am Maritime Administrator and Chairman of the Federal Maritime Board. I make this Affidavit on the basis of information obtained by the Maritime Administration in the performance of its functions.

More than three months have elapsed since the steel strike began, and, in my opinion, if the work stoppage continues in effect for another 30 or 60 days, it will materially and adversely affect the shipbuilding industry of this country and result in costly delays to both the shipyards and the ship owners.

The Maritime Administration maintains employment data in the shipbuilding industry only for those 21 shipyards capable of building ships 475 by 68 feet. While these 21 shipyards reported on by the Shipbuilder's Council constitute but 22 per cent of the total shipbuilding and ship repair firms, they account for nearly 50% of employment in private shipyards.

During the course of a survey conducted within the past few days, we have consulted representatives of the majority of the other American shipyards, other than the yards on the West Coast, which have been on strike for the past several weeks.

These yards report that new construction contracts well along at the start of the strike are beginning to feel the strike's effect principally because of the need for special gauges and items which are now short. Contracts for which steel was not obtained prior to the strike are being delayed for the duration of the strike or possibly longer. Stock on hand at the strike's beginning has now been largely consumed and lay-offs of workers are beginning to take place. Unemployment will become increasingly serious as the strike is prolonged and lay-offs up to 75% or more will be in effect in 60 days if the strike is not promptly settled.

Repair yards in general had considerable steel stock on hand at the strike's beginning, which is becoming somewhat depleted in some gauges and sizes. Contracts are now being accepted conditionally, that is, subject to the "availability" of steel. Big jobs requiring considerable steel cannot be undertaken at this time because such steel will have to be obtained from the mills. The steel shortage is getting progressively worse, and will become more

acute as the strike continues. Lay-offs have not taken place as yet to any considerable extent, but it is anticipated that a continuation of the strike for 30 to 60 days will entail the lay-off of workers in considerable numbers.

Production workers in the 21 major shipbuilding yards total 53,650 (rounded) of which 52.8 per cent are engaged in work generated by the Department of the Navy, 37.0 per cent in work for private industry and 10.2 per cent in work initiated by the Maritime Administration or otherwise covered by construction differential subsidy.

A breakdown, by coastal districts, reflects the following percentage distribution of production workers for the month of August, 1959, the most recent data available:

	Total	Atlantic	Gulf	Pacific	Great Lakes
		(Per cent)			
NAVY	52.8	60.4	37.5	*30.2	32.0
PRIVATE	37.0	32.9	45.2	32.5	68.0
MARAD	10.2	6.7	17.3	37.3	———
TOTALS	100.0	100.0	100.0	100.0	100.0

The following tabulation of employment experienced by the 21 major shipbuilding yards reflects the following changes during the first eight months of 1959:

Month	Total	Atlantic	Gulf	Pacific	Great Lakes
Jan. 1959	54,715	36,696	9,794	4,527	3,698
Feb.	52,909	36,597	8,660	4,171	3,481
March	54,196	36,941	9,311	4,197	3,747
April	54,572	37,232	9,422	4,205	3,713
May	54,662	37,715	9,185	4,159	3,603
June	55,254	38,154	9,015	4,657	3,428
July	53,940	37,162	8,912	4,547	3,319
August	53,650	37,836	8,827	3,851	3,145
Sept. (est.)	51,500	37,700	8,700	2,000	3,100

*Machinist's strike affecting shipyards from San Francisco northward; commenced Aug. 25, 1959 and involves Beth. Pacific Yard, San Francisco and Moore Drydock Co. at Oakland, two of the 21 major shipyards. Approximately 1,800 production workers in these two yards have been idle since 8/25/59.

The effects of the steel strike have already been felt in a few shipyards. For example, Todd-Houston (which is not one of the 21 shipyards) requested an extension of construction time for the Service Barge for the nuclear powered ship SAVANNAH; Avondale Marine Ways (Gulf Coast District) reports it is incurring delay in the construction of the Mississippi Shipping Company vessels. In these two cases, the proximity of the contract signing

dates with the beginning of the steel strike was such that the yards could not obtain the required steel prior to the strike. Both shipyards report that employment is down at the present time due to the strike.

If the strike continues another 30 to 60 days, its effect will be felt more severely. Employment in the Avondale yard will be reduced 50% to 75%. In the Todd-Houston yard employees are presently being dropped and unemployment will become more acute if the strike continues. Williamette Iron & Steel Company, Portland, Oregon, has already laid off one-half of its force. Activities in this yard will be almost completely stopped in 30 days. Bethlehem Steel Company (Key Highway) reports that it is already handicapped because contracts must be conditioned by "availability of steel", and big jobs involving the use of considerable steel cannot be undertaken. The yard's stock in some respects is already depleted and the situation is becoming progressively worse.

The effect of the continuation of the strike on shipyard construction and employment in other areas will be quite varied, depending upon the amount of steel on hand in the shipyards on July 15.

On the Atlantic coast, Bethlehem-Sparrows Point (Lykes Contracts) reported that the effects of the strike will become increasingly serious in the next 30 to 60 days; and that some lay-offs have already occurred.

On the Pacific coast, National Steel and Shipbuilding Company has informed us that the continuation of the strike will seriously delay the construction of the four C3-S-46a design ships for American Export Lines; also that about 30% of the present employees will be laid off if the strike continues for 60 days from now. At the Todd Shipyard, San Pedro, construction will be drastically reduced after 30 days from now, and completely halted in 180 days. Employment in this yard will be reduced by about 40% if the strike is continued for another 60 days.

Based on reports received from various shipyards, it is estimated that it will take at least six weeks after the steel mills resume operation to regain about 90% of the normal shipping capacity; also that it will take about 90 days of operation to fill orders received before the strike commenced. Before this steel is received, there will be a shortage of material in the shipyards. Some sizes and gauges required for steel construction, but not otherwise in great demand, will be hard to obtain for some months after the strike is settled, and it is anticipated that the effects of the strike will be felt in the shipyards for months ahead and will delay construction of vessels not already well under way. A delay in the settlement of the strike beyond the present time will also be the cause of unemployment in

various shipyards for six months or more after the strike is settled. If the work stoppage continues in effect for another 30 or 60 days it will result in extensive delays and increased costs in the current replacement programs of United States ship owners and, in my opinion, will adversely affect the American Merchant Marine, which is a vital auxiliary to the Navy and Military forces in time of emergency.

Clarence G. Morse
Maritime Administrator
Chairman, Federal Maritime Board

District of Columbia
City of Washington

Subscribed and sworn to before me
this 16th day of October, 1959
Jennie W. Diamond
Notary Public in and for the
District of Columbia

My Commission Expires:

September 30, 1964.

Title Omitted in Printing

CITY OF WASHINGTON
DISTRICT OF COLUMBIA } ss

AFFIDAVIT OF DR. RAYMOND J. SAULNIER, CHAIRMAN OF THE COUNCIL OF ECONOMIC ADVISERS OF THE FEDERAL GOVERNMENT

I, RAYMOND J. SAULNIER, being duly sworn, depose and say that I have been Chairman of the Council of Economic Advisers of the Federal Government since December 1, 1956, and I make the annexed statement upon the basis of information obtained by me in the performance of my official duties and affirm it to be true.

R. J. Saulnier

Sworn and subscribed to
before me this 19th day
of October, 1959
George Frault
Notary Public
Washington, D.C.
My Commission Expires June 15, 1961

Summary and Evaluation of the Statement by Robert R. Nathan, Consulting Economist, before the Board of Inquiry in the Steel Dispute

(Submitted by Dr. Raymond J. Saulnier, Chairman of the Council of Economic Advisers, in accordance with a request from the Attorney General of the United States)

I.

In his statement before the Board of Inquiry in the steel dispute, Mr. Nathan asserts that the steel on which national health and safety depend is mainly the steel incorporated in items already in existence and that only a small part of the new output of steel is necessary to sustain activities that have either a direct or indirect bearing on the nation's health and safety. Having this view of the immediate needs for steel, he states that "shortages which would endanger the public health and safety surely are neither present nor imminent." (p. 4). With the exception of certain specialized steel products needed in defense programs (supplies of which Mr. Nathan believes could be obtained by reopen-

ing a very small number of mills), the productive capacity of mills still in operation plus steel provided by imports is alleged to be more than adequate to meet defense and essential civilian requirements.

This conclusion is based by Mr. Nathan on five separate bodies of statistics. First, from certain summary data on steel use in 1944 he concludes that "possibly as much as 15 percent, but more likely 10 percent, of total steel shipments in 1944 were used for purposes related to health and safety" (p. 10) and that "in terms of ingot requirements, this would aggregate between about 8 million ingot tons and 12 million ingot tons." (p. 10) He further states that even if the upper limit of this range—12 million tons—is adjusted for changes since 1944 in population and living standards, "the resulting total would still fall within the capacity of the steel mills currently operating, not to mention the substantial additional supply available from current imports." (p. 11)

Second, from data on steel demands in 1940 and 1946 he concludes that "less than 4 million tons of steel products in 1940 and less than 5 million tons in 1946 could be classed as directly essential to health and safety, excluding defense" (p. 14) and that "the volume of ingots required for these steel products might have been around 5 million tons in 1940 and between 6 and 7 million tons in 1946." (p. 14). On the basis of these figures he concludes that "even taking full account of the growth in population and rising standards of health and general safety since 1940 and 1946, it is abundantly clear that present requirements for health and safety, excluding defense, are less than half of the quantities of steel currently being produced in operating mills and being imported from abroad." (p. 14)

Third, on the basis of a review of statistics on steel consumption in 1947, he concludes that the output of steel mills still in operation is at least double what was used in 1947 for purposes related to health and safety and that steel in this amount could be readily supplied by operating steel mills and imports.

Fourth, from a review of steel shipment statistics for 1938 he concludes that, while a prolonged lack of steel for construction and the manufacture of machinery, transport and industrial equipment, and consumers' durable goods would do damage to the economy, the threat which this would pose to the nation's health and safety is not significant. (p. 21) In his judgment, "perhaps ten million ingot tons or about half the capacity of plants now operating" (p. 23) would be a generous estimate of the needs for steel that might be regarded as essential to health or safety. This amount, he states, could be obtained from steel plants now operating, with a further margin supplied by imports. (p. 23)

Finally, from an examination of steel shipments made under rated orders for defense program purposes in 1958 and the first six months of 1959 he notes that "an annual output of ingots of not more than one million tons . . . less than five percent of the productive capacity of steel mills currently in operation" (p. 24) was used for military requirements. Defense needs for specialized types of steel not available from mills still in operation could be supplied, he believes, by reopening a "very small number of mills." (p. 26)

2.

The basic flaw in Mr. Nathan's argument is that his conclusions rest on a conception of the nation's health and safety that is too narrow to be useful for assessing the full current and future impact of a prolonged shutdown of the steel industry.

The plain fact is that a prolongation of the steel strike would seriously impair the operation of our economy and, in so doing, gravely imperil the nation's safety. In today's international context, the nation's safety depends heavily on the vigor and efficiency of the economy. To accept an avoidable and prolonged interruption of production in a major and basic sector of our economy at this juncture of world affairs would risk serious, possibly even fatal, damage to our position as leader of the free world. For us deliberately to confine ourselves for an indefinite future period to meeting the nation's bare-minimum requirements would encourage doubts on the part of friendly and uncommitted nations as to our capacity and determination to honor economic and military agreements now in force and to face up to new contingencies.

A sound and vigorous United States economy is essential not only to maintain the confidence of friendly and uncommitted nations; it is essential also to the deterrence of potential aggressors. For us to give an impression of national inability and, worse than that, of national unwillingness to avert a predictable and avoidable paralysis of a basic sector of our economy could invite military adventurers to set small wars in motion. To fight such wars requires economic flexibility as well as readiness. Inability on our part to mobilize soon enough, or to turn our full productive powers to the challenge with sufficient speed, could have most unfortunate consequences for the nation.

Mr. Nathan's concept of the nation's health and safety is too narrow also when applied to purely domestic matters. Public morale would deteriorate in an economy deliberately reorganized to operate in low gear. A prolongation of the steel strike would entail rapidly increasing unemployment and require the imposition of extensive controls. Such a situation would generate and aggravate fears and tensions, undermine traditional freedoms, and invite the spread of

a sense of economic insecurity. An increasing number of involuntarily unemployed persons would be unable to satisfy the health needs of their families. And a contrived condition of steel scarcity could render the nation incapable of dealing adequately with such peacetime disasters as floods, tornadoes, hurricanes, fires, and epidemics."

3.

There is a second basic flaw in Mr. Nathan's argument. Even if we accept his narrow definition of the nation's health and safety needs, it cannot be conceded that the supplies of steel still reaching the market are adequate for these purposes.

To compare "needs" *as ingot tons* with available "supplies" *as ingot tons*, without regard to the specific types and forms involved, is seriously misleading. Steel is not chemically or physically uniform; its products comprise a vast variety of items, made and further processed in specialized facilities of many different mills and plants. While Mr. Nathan concedes that this is true of the steel needed for defense purposes, he grossly underestimates the difficulties that would have to be overcome in obtaining the specific types of steel required for defense purposes without reactivating major sections of the industry. Steel is produced through closely interrelated processes that often cannot be separated technically or economically to allow production of items "needed" on Mr. Nathan's definition while omitting items "not needed." On this point, the Business and Defense Services Administration of the Department of Commerce declares that "in order to satisfy defense requirements alone from the standpoint of size, grade, and product, it would be necessary to reactivate 25 to 30 hot rolling mills together with supporting blast furnaces, and Bessemer, electric, open hearth and vacuum-melting furnaces. Additional facilities for pickling, coating, heat treating, cold finishing, shearing, cutting, testing, and the like would also be required. To reopen these plants for the production of steel products to meet only defense requirements would be totally impracticable. The problems of scheduling the limited tonnages involved, plus the cost and technical difficulty of start-ups and shut-downs would appear to be insurmountable."

The difficulties involved in meeting essential non-defense needs are no less formidable. For example, Mr. Nathan estimates that 300,000 tons of "railroad rails, trackwork and equipment" (p. 22) would be needed to meet the nation's essential requirements for these steel products. Competent experts familiar with today's rail industry regard this estimate as too low; but, even if it is accepted as correct, these experts note that no rails at all, with the exception of a few light rails not used in main line tracks, are available from current production or from imports and that at least two of the

major mills designed to produce them would have to be reactivated. Indeed, these mills will have to be in operation within a few weeks if supplies needed for 1960 are to be available.

Similarly, Mr. Nathan's concentration on aggregates of ingot tons rather than on specific steel items obscures such other vital facts as the following, noted by experts intimately acquainted with the current situation: (i) mills now operating could not supply the axles needed for railroad car use; (ii) less than a minimum supply of rolled railroad wheels can be obtained from plants still in operation; (iii) there is no mill now operating that could supply sizeable quantities of wide and heavy steel plates for vital military and essential civilian uses; (iv) no steel sheet piling, essential in many construction projects, including docks, bridges and dams, is available from presently operating plants; and (v) none of these essential steel products are imported in significant amounts.

Obtaining adequate supplies of these and other essential civilian items of steel, like obtaining steel for defense purposes, would clearly require the reopening of more than just a few mills. It would also require the reopening of many related facilities for supplying the component materials of steelmaking and for processing, finishing, and distributing steel products.

Even if it were technically possibly to resume steel production on this selective basis, to do so would be exceedingly uneconomic and wasteful. Presumably the Federal Government would be required to underwrite some part of the costs of such a wasteful operation of facilities. For government to undertake such a grotesque, inefficient and costly organization of our steel-producing facilities by reason of a national strike would be offensive to the public conscience, as well as to the public interest.

I.

Serious objection is also raised to Mr. Nathan's estimate of how much steel is needed to maintain, repair and replace essential facilities and equipment.

The estimates he presents on this subject cannot be verified but it is clear that his use of steel *shipments* in 1958 as a measure of steel *consumption* in that year involves a serious understatement. Inventories were drawn down in 1958 to meet a large part of the year's current requirements, so that actual consumption exceeded shipments.

In addition, estimates of cognizant Federal agencies for the replacement needs of such articles as automobiles, trucks, and household appliances are far larger than Mr. Nathan's. Thus, it is estimated that (i) about 50 percent of the annual output of automobiles and trucks is needed to keep the total supply intact; (ii) one-third of

the steel used in the manufacture of household appliances is needed to keep the supply of these articles intact, and (iii) that about 10 percent of construction, and thus of the steel used in construction, is needed merely to offset the current demolition of dwelling units and other structures and the abandonment of unsafe and unsanitary buildings.

In short, contrary to Mr. Nathan's findings, a far larger percentage of normal steel output than is represented by the tonnage produced by mills still in operation is needed merely to keep the nation's stocks of steel-using articles deemed essential to the nation's health and safety at constant levels and in good repair.

— 5. —

Mr. Nathan's statement makes no mention of the extensive controls that would be needed to husband supplies of steel during a period of shortage that he envisages. Yet the implications of the policy which he advocates include massive governmental interference in economic affairs. Government would have to requisition all existing supplies of steel held by mills and distributors. It would probably also have to requisition steel in the hands of its principal users, in order to prevent its use for purposes other than those of the highest essentiality. It would be necessary to establish a thoroughgoing system for allocating existing stocks of steel and all new steel output to uses deemed essential. Finally, since shortages would encourage sharp price increases, equity would require that additional controls be imposed on manufacturers and distributors of steel.

— 6. —

Mr. Nathan is vague as to the maximum duration of a steel strike that he would regard as tolerable from the standpoint of the nation's health and safety. In the first paragraph of his statement he asserts that a continuation of the strike would not "imperil the health or safety of the nation *now or in the near future*." (p. 1, italics supplied). At other places he expresses or implies a willingness to accept "a delay of a few months" (p. 3) or a "temporary delay" (p. 4), and elsewhere indicates that the nation's health or safety "within the next few months" would require only a small amount of steel. On page 12 he speaks of requirements for "a period of months," without specifying the period he has in mind. On page 20 he refers to the steel required for certain products "in the short run," without specifying what he means; and on page 21 he speaks of a "prolonged lack of steel," again without specifying what time period he has in mind.

It would seem reasonable to infer from these references that Mr. Nathan believes that steel production could be maintained at

its present low level—some 8% below the level attained in the first half of the year—for at least an additional three months, and possibly much longer, without doing damage, or threatening to do damage, to the nation's health and safety.

Mr. Nathan greatly underestimates the economic damage that would result from such a shutdown. The strike has already had a serious economic impact. Its effect, measured in broad indexes of the nation's economic activity, is comparable with, and in some respects greater than, that which occurred in the first three months of recession in 1957. Thus, in addition to the 500,000 steel workers on strike, another 250,000 are estimated to have been laid off as a result of the strike's impact on related industries. Personal income was reduced between June 1959 and September 1959, on an annual rate basis, by about $1 billion.

The wider and graver effects of the strike are yet to make themselves felt, but they may be expected very soon. As steel inventories are exhausted they will spread at accelerating rates throughout the economy. And exhaustion of inventories is imminent. It is estimated that steel is now being consumed at a rate of about 5 million tons a month and that only about 1.4 million tons of this is being made up out of current shipments and imports. Stocks of steel held by industries, in warehouses or in transit, have been reduced from close to 25 million tons when the strike began to some 10 million tons at the present time. This amount is considerably lower than typical for a level of activity comparable to that obtaining in early 1959. The inventories are also less well balanced as to types of steel. Unless economic activity is sharply reduced in the few weeks ahead, a result that itself would be undesirable, supplies will be virtually exhausted within two months. Supplies of certain types of steel are being exhausted already, limiting the usefulness of remaining supplies.

With the exhaustion of steel inventories, all manufacturing industries that use steel would have to stop operations except to the extent that they can use current output, imports, and substitute materials. This contraction of production is already under way. Reports of layoffs by manufacturers of automobiles, railroad equipment, agricultural and road building equipment, and industrial machinery are noted in newspapers with increasing frequency. Evidence of delays and postponements of construction projects, public and private, is mounting rapidly. Layoffs of several million could result from the spreading impact of steel shortages in steel using industries and from the secondary effects felt elsewhere in the economy.

Mr. Nathan seems willing to accept an economic dislocation of such dimensions, but any realistic interpretation of the health and

safety of the nation counsels against undertaking such a callous experiment. An employement decline of this magnitude would be equivalent to a recession of major proportions—in this case, artificially produced. It would involve huge losses of personal income and a needless erosion of individual and social savings. The consequent sharp reduction in funds available for the purchase of food, clothing, and medical care would impose serious hardships on millions of American families and literally endanger their health and safety.

[Title omitted in printing]

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

[Proposed by Plaintiff]

This cause having come on for hearing on the application of plaintiff, the United States of America, for an injunction, as prayed for in its verified petition, and the Court having considered all evidence submitted herein, the pleadings, memoranda of law, and argument of counsel, makes the following Findings of Fact and Conclusions of Law with respect to said application:

FINDINGS OF FACT

1. On October 9, 1959, the President of the United States, acting under the national emergency provisions of the Labor Management Relations Act, 1947 (61 Stat. 155, 29 U.S.C. 176) issued Executive Order 10843 (24 F.R. 8249) whereby he appointed a Board of Inquiry to inquire into the issues involved in labor disputes between employers in the steel industry which produce at least 85% of the steel production of the United States, and certain of their employees represented by the United Steelworkers of America (hereinafter sometimes referred to as the "Union"). In the Executive Order the President expressed the opinion that such disputes had resulted in a strike affecting a substantial part of the steel industry, an industry engaged in trade, commerce and transportation among the several states and with foreign nations and in the production of goods for commerce, and that the strike, if permitted to continue, would imperil the national health and safety. On Ocober 14, 1959 the President issued Executive Order 10848 (24 F.R. 8401) extending to October 19, 1959 the date upon which the Board of Inquiry was to report to him.

2. The Board of Inquiry so convened by the President inquired into the issues involved in the disputes and rendered its written report to the President on October 19, 1959.

3. On October 19, 1959, after receipt of the report, the President directed the Attorney General, pursuant to the provisions of Section 208 of the Act (29 U.S.C. 178), to petition in the name of the United States any district court of the United States having jurisdiction of the parties to enjoin the continuance of such strike and for such other relief as might be necessary or appropriate. In his communication to the Attorney General, the President stated that in his opinion the unresolved labor dispute had resulted in a strike affecting a substantial part of an industry engaged in trade, commerce and transportation among the several States and with for-

eign nations and in the production of goods for commerce, which strike, if permitted to continue, would imperil the national health and safety.

4. On October 20, 1959, the Attorney General filed a petition on behalf of the United States of America in this Court for an injunction against the defendants named in the petition.

5. Each of the defendants has by stipulation waived service of process and submitted to the jurisdiction of this Court and agreed that the case should be submitted to the Court for final hearing immediately upon the filing of the petition with evidence limited to affidavits and exhibits.

6. The defendants, except the Union, by stipulation waived their right to file any responsive pleading. The answer of the Union has been filed and the affidavits and exhibits of the parties received in evidence.

7. This suit was commenced under the national emergency provisions of the Act (Sections 206-210, 29 U.S.C. 176-180).

8. The strike by the defendant Union consisted of a concerted stoppage of work on the part of that defendant and did not constitute the exercise of the right of individual employees to quit their labor as set forth in Section 502 of the Act (29 U.S.C. 143).

9. The strike on the part of the Union resulted from unresolved labor disputes between defendant employers, who are engaged in one or more of the various stages of steel production, including the mining and transport of iron ore by railroad or vessel, the operation of blast furnaces for the conversion of iron ore into pig iron, the production of steel ingots, the rolling and shaping of steel ingots into various shapes and forms of steel products, and the fabricating of certain finished products, and certain of their employees represented by the Union.

10. The Board of Inquiry made an extensive investigation of the issues and devoted a considerable amount of time to attempting to have the defendants resolve the dispute by free and collective bargaining. These efforts on the part of the Board of Inquiry were unsuccessful and the disputes remain unresolved.

11. Unless the Court grants the injunction sought by the United States the strike will continue for an indeterminate period. The report of the Board of Inquiry concludes that "the parties have failed to reach an agreement and we see no prospects for an early cessation of the strike. The Board cannot point to any single issue of any consequence whatsoever upon which the parties are in agreement."

12. The strike affects a substantial part of the steel industry of the United States, which is engaged in trade, commerce and

transportation among the several States and with foreign nations and in the production of goods for commerce.

13. The strike, which commenced on July 15, 1959 and has continued until the present time, has resulted in the closing on July 15, 1959 of facilities producing at least 85% of the total steel production of the United States. Inventories of steel have dropped from the abnormally high figure of 24,800,000 tons on July 15, 1959 to approximately 10,000,000 tons. This is below the normal inventory level and is below the level required to sustain continued production of industries and businesses dependent upon steel products. Approximately 500,000 striking members of the Union are now unemployed and more than 265,000 employees are idle in other industries by reason of the steel strike. The 765,000 unemployed support families numbering over 2,000,000 persons. If the strike were to continue, the total number of workers made idle by it would probably reach approximately 1,775,000 by the end of November and approximately 3,000,000 by the end of December. By that time more than 9,000,000 people would probably be directly and adversely affected by the strike.

14. On October 16, 1959 the Business and Defense Services Administration of the Department of Commerce issued an order requiring top priority to be given by steel producers to items required for use under the programs of the Department of Defense, including missiles, launching sites and nuclear vessels. This order applied immediately to steel producers which have not been shut down by the strike. It could not, however, meet the essential requirements of the Department of Defense because many of the special steel products it needs are not carried in inventory or produced by the plants still in operation.

15. The strike, which has now been in existence for more than 95 days, if permitted to continue, will imperil the national health and safety in the following respects:

(a) Certain items of steel required in top priority military missile programs of the United States are not made by any mill now operating, nor available from any inventory or from imports. Any further delay in resumption of steel production would result in an irretrievable loss of time in the supply of weapons systems essential to the national defense plans of the United States and its allies.

(b) The planned program of space activities under the direction of the National Aeronautics and Space Administration has been delayed by the strike and will be further delayed if it is continued. Specifically, project MERCURY, the nation's manned satellite program, which has the highest national priority, has been delayed by reason of delay in construction of buildings essential to its operation. This program is important to the security of the nation. Other

planned space programs will be delayed or threatened with delay by a continuation of the strike.

(c) The strike has interrupted the flow of steel for such uses as the construction of ships, tanks, aircraft and their engines, and atomic reactors for naval propulsion. Products of the steel industry are indispensable to the manufacture of such items and delay in their production will irreparably injure national defense and imperil the national safety.

(d) Exported steel products are vital to the support of United States bases overseas and for the use of NATO allies and similar collective security groups. The steel strike, if permitted to continue, will seriously impair these programs, thus imperiling the national safety.

(e) A continuation of the strike will have the ultimate effect of adversely affecting millions of small business enterprises, almost all of which are directly or indirectly dependent upon steel products and most of which lack the resources to stock large inventories. In addition, it will have the effect of idling millions of workers and a large proportion of the facilities in industries dependent upon steel for their continued operation. Such industries account for the employment of approximately 6,000,000 workers and normal annual wages and salaries totalling approximately $34,000,000,000. The products of these industries are valued at over $125,000,000,000. The national health will be imperiled if the strike is permitted to continue.

16. Such results, if the strike is permitted to continue, will imperil the national health and safety and thereby cause irreparable damage and injury to the United States of America for which there is no adequate remedy at law.

CONCLUSIONS OF LAW

1. This action was properly instituted under the national emergencies provisions of the Labor Management Relations Act of 1947, Sections 206-210 (29 U.S.C. 176-180).

2. The statutory provisions of Sections 206 to 208 of the Act were in all respects fully and legally complied with, both prior to and at the commencement of this suit by the United States of America.

3. The Court has jurisdiction of the subject matter of this suit and of the parties.

4. The work stoppage was a strike on the part of the United Steelworkers of America and did not constitute the exercise of the right of individual employees to quit their labor as set forth in Section 502 of the Act.

5. The strike is one affecting a substantial part of an industry engaged in trade, commerce and transportation among the several States and with foreign nations and engaged in the production of goods for commerce.

6. The strike, if permitted to continue, will imperil the national health and safety and thereby cause irreparable injury to the United States of America for which there is no adequate remedy at law.

7. Plaintiff, the United States of America, is entitled to the relief prayed for.

United States District Judge

Dated

INJUNCTION

[Proposed by Plaintiff]

This cause having come on for hearing on the _____ day of October, 1959, upon a petition of the United States of America for an injunction pursuant to § 208 in the Labor-Management Relations Act of 1947 29 U.S.C. 178, and the parties having stipulated by their respective counsel that (1) the Defendants, and each of them, waive service of process and submit themselves to the jurisdiction of the Court, (2) the case be submitted to the Court for final hearing immediately upon the filing of the complaint and (3) at such hearing all parties submit their evidence by way of affidavits and exhibits, without oral testimony, and the Court having considered the evidence submitted herein by way of affidavits, the pleadings, memoranda of law and argument of counsel:

NOW, THEREFORE, it is this _____ day of October, 1959, by the United States District Court for the Western District of Pennsylvania, ordered:

1. That the Defendants, and each of them, and their officers, agents, servants and employees, and all persons in active concert or participation with them, be and they are hereby enjoined and restrained (a) from in any manner continuing, encouraging, ordering, aiding, engaging or taking part in a strike or lockout in any of the various stages of steel production, including the mining and transport of iron ore by railroad or vessels, the operation of blast furnaces for the conversion of iron ore into pig iron, the production of steel ingots, the rolling and shaping of steel ingots into various shapes and forms of steel products and the fabricating of finished steel products, and (b) from in any manner interfering with or affecting the orderly continuance of work therein.

2. That the members of the Defendant United Steel Workers of America, acting in concert, be and they hereby are restrained and enjoined from in any manner continuing, encouraging, ordering, aiding, engaging in or taking part in any strike or lockout at the facilities or operations of the employer Defendants described in the preceding paragraph hereof, or from in any manner interfering with or affecting, the orderly continuance of work at such places, and from taking any action which would interfere with this Court's jurisdiction in the premises; provided, however, that nothing in this paragraph shall be construed to require an individual employee to render labor or service without his consent or to make the quitting of his labor or service by an individual employee an illegal act.

3. That the Defendant, the United Steel Workers of America, its president and other appropriate officers, agents and employees, be and they are hereby directed: (a) to instruct, immediately, all its members (i) who are employees of the employer Defendants, and (ii) who are engaged in any of the operations described above to resume their normal employment forthwith; (b) to give notice forthwith to all its members of the terms of this Order by posting a copy of such Order at the headquarters of the United Steel Workers of America at 1500 Commonwealth Building, Pittsburgh, Pennsylvania, and such posting will be deemed to constitute notice of this Order to all members of the United Steel Workers of America; and (c) to take all other appropriate action which may be necessary to insure that such directions are carried out.

4. That, during the period of this injunction unless and until new agreements are executed between the employer Defendants and the United Steel Workers of America, the employees of the employer Defendants represented by the United Steel Workers of America shall be employed under the terms and conditions of all agreements in effect on June 30, 1959 between the employer Defendants and the United Steel Workers of America.

5. That, during the period of this injunction, the several Defendants are directed to engage in free collective bargaining in good faith for the purpose of resolving their labor disputes and to make every effort to adjust and settle their differences.

6. This Order shall remain in full force and effect until the further order of this Court.

Issued 1959,
m. o'clock (EST)

/s/
United States District Judge

[Title omitted in printing]

COMMENTS ON BEHALF OF EMPLOYER-DEFENDANTS ON THE FORM OF INJUNCTION DECREE PRESENTED BY THE PLAINTIFF, UNITED STATES OF AMERICA

At the close of the final hearing of this case, before the Honorable Herbert P. Sorg, on October 20, 1959, the Assistant Attorney General presented to the Court and to counsel for the defendants a draft of a decree of injunction which he would desire the Court to enter.

The employer-defendants have the following comments on this form of decree:

I.

AS TO PARAGRAPHS "1." and "2."

It is requested that, if the Court determines to enter an injunction against the defendants in this case, these two paragraphs be amended by adding the words which are underscored or italicized in the following redrafts of the two paragraphs:

1. That the defendants, and each of them, and their officers, agents, servants and employees, and all persons in active concert or participation with them, be and they are hereby enjoyed and restrained (a) from in any manner continuing, encouraging, ordering, aiding, engaging or taking part in a strike or lockout in any of the operations of the employer defendants *or their subsidiaries* pertaining to the production of iron and the manufacture, rolling, drawing, forging and fabricating of steel and steel products, including the mining and transport of iron ore and other component materials necessary for the production of iron and steel, and (b) from in any manner interfering with or affecting the orderly continuance of work therein.

2. That the members of the defendant United Steelworkers of America, acting in concert, be and they hereby are restrained and enjoined from in any manner continuing, encouraging, ordering, aiding, engaging in or taking part in any strike or lockout at the facilities or operations of the employer defendants *or their subsidiaries* described in the preceding paragraph hereof, or from in any manner interfering with, or affecting, the orderly continuance of work at such places, and from taking any action which would interfere with this Court's jurisdiction in the premises; provided, however, that nothing in this paragraph shall be construed to require an individual employee to render labor or service without his consent or to make the quitting of his labor or service by an individual employee an illegal act.

These changes are made necessary by the following circumstances of the case.

All of the employer-defendants are corporations. A number of them have wholly-owned subsidiary corporations—that is, corporations of which they are sole stockholders. These corporations are engaged in the manufacture of iron or steel products or the mining or transport of iron ore or others of the kind of business described in paragraph 1 of the proposed decree. The subsidiary corporations have contracts with the defendant United Steelworkers of America, as representative for the purposes of collective bargaining of certain of their employees, and their operations have been and are suspended by the strike which is the principal subject of this case. It appears that the omission of these subsidiary corporations as defendants in the case must have been the result of inadvertence, since in certain other cases wholly-owned subsidiary corporations have been named as defendants.

Were an injunction to be entered in this case which would omit the wholly-owned subsidiaries as defendants, as they are omitted from the Assistant Attorney General's petition to the Court, great confusion would be certain to result. It might well be necessary for the Court and other parties to engage in supplemental proceedings, probably at a great expense of energy, time and money, to clarify the status of the omitted firms and their employees. On the other hand, if an injunction decree is to suspend the existing strike, in accordance with the provisions and purposes of the Labor-Management Relations Act, 1947, it is certain that it should apply to all employees who are engaged in the general strike.

II.

AS TO PARAGRAPH "4."

Paragraph 4. of the decree proposed by the Assistant Attorney General reads as follows:

> "4. That, during the period of this injunction unless and until new agreements are executed between the employer defendants and the United Steelworkers of America, the employees of the employer defendants represented by the United Steelworkers of America shall be employed under the terms and conditions of all agreements in effect on June 30, 1959 between the employer defendants and the United Steelworkers of America."

If the Court shall determine to enter an injunction in this case, it will be in keeping with procedure followed in several earlier decisions under the same Act to include some such provisions as this.

If such a provision is to be included, the language of the proposed paragraph 1. will probably be satisfactory to all of the parties in this case.

However, it appears necessary to the employer-defendants to point out to the Court that there is one question which might pose a difficult problem of interpretation in the future, under the language of this paragraph. This question pertains to the cost of living provision which was included in all or nearly all of the United Steelworkers of America contracts which expired by their terms on June 30, 1959. The employer-defendants contend that such provision is not one of the terms and conditions which should be applicable during the period of the injunction. The cost of living provision was, under the 1956 contracts, clearly intended to have no effect after June 30, 1959; and, during the negotiations which preceded the current strike, it was the undeviating position of the companies that no cost of living provision should be included in any new contract. The union defendants may contend that, under the proposed decree, a cost of living adjustment may be called for.

At the present time, this question is moot since no increase under this provision, even if in effect, could occur during the balance of this year; and since this question may never have to be decided by this Court.

For the above reasons and in order to save the time of the Court, it is suggested that the Court reserve this question, rather than either (a) hear complete argument at this time or (b) leave the question as one of interpretation of a decree otherwise satisfactory, we believe, to all parties.

John C. Bane, Jr.

Reed Smith Shaw & McClay
Union Trust Building
Pittsburgh, Pennsylvania

Wm. K. Montague
1200 Alworth Building
Duluth, Minnesota

Attorneys for Employer-Defendants

October 21, 1959

The Honorable Herbert P. Sorg
Judge, United States District Court
for the Western District of Pennsylvania
United States Court House
Pittsburgh, Pennsylvania

Re: Civil No. 18212

United States of America
v
United Steelworkers of
America, et al.

Dear Judge Sorg:

In accordance with your suggestion, I forward herewith the proposed Findings of Fact and Conclusions of Law of defendant United Steelworkers of America as well as a proposed Form of Order for use in the event you should determine the issues herein in favor of said defendant. The proposed Findings and Conclusions necessarily contain alternatives based on the alternative contentions of the defendant.

In addition, I enclose for your consideration, in the event you should determine the issues in favor of the plaintiff, proposed amendments to the form of Injunction Order tendered by the plaintiff on October 20, and objections to the proposed Finding of Fact and Conclusions of law submitted by the plaintiff.

Copies of this letter and its enclosures are being delivered, simultaneously, to counsel for the plaintiff and for the employer defendants.

Very truly yours,

s/ Arthur J. Goldberg

Arthur J. Goldberg
General Counsel
United Steelworkers of America

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

UNITED STEELWORKERS OF AMERICA, et al.,
Defendants.

Civil No. 18242

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having come on for hearing on the application of plaintiff, the United States of America, for an injunction, as prayed for in its verified petition; and the Court having considered all evidence submitted herein, the pleadings, memoranda of law, and argument of counsel, makes the following Findings of Fact and Conclusions of Law with respect to said application:

FINDINGS OF FACT

1. On October 9, 1959, the President of the United States, acting under the national emergency provisions of the Labor Management Relations Act, 1947 (61 Stat. 155, 29 U.S.C. 176) issued Executive Order 10843 (24 F.R. 8219) whereby he appointed a Board of Inquiry to inquire into the issues involved in labor disputes between a substantial portion of the steel industry and certain of their employees represented by the United Steelworkers of America (hereinafter sometimes referred to as the "Union"). In the Executive Order the President expressed the opinion, but made no finding, that such disputes had resulted in a strike affecting a substantial part of the steel industry, an industry engaged in trade, commerce and transportation among the several states and with foreign nations and in the production of goods for commerce, and that the strike, if permitted to continue, would imperil the national health and safety. On October 14, 1959 the President issued Executive Order 10848 (24 F.R. 8401) extending to October 19, 1959 the date upon which the Board of Inquiry was to report to him.

2. The Board of Inquiry so convened by the President inquired into the issues involved in the disputes and rendered its written report to the President on October 19, 1959.

3. On October 19, 1959, after receipt of the report, the President directed the Attorney General, pursuant to the provisions of section 208 of the Act (29 U.S.C. 178), to petition in the name of

the United States any district court of the United States having jurisdiction of the parties to enjoin the continuance of such strike and for such other relief as might be necessary or appropriate. In his communication to the Attorney General, the President again stated his opinion that the unresolved labor dispute had resulted in a strike affecting a substantial part of an industry engaged in trade, commerce and transportation among the several States and with foreign nations and in the production of goods for commerce, which strike, if permitted to continue, would imperil the national health and safety.

4. On October 20, 1959, the Attorney General filed a petition on behalf of the United States of America in this Court for an injunction against the defendants named in the petition.

5. Each of the defendants has by stipulation waived service of process and submitted to the jurisdiction of this Court and agreed that the case should be submitted to the Court for final hearing immediately upon the filing of the petition with evidence limited to affidavits and exhibits.

6. The defendants, except the Union, by stipulation waived their right to file any responsive pleading. The answer of the Union has been filed and the affidavits and exhibits of the plaintiff and the Union received in evidence. The employer defendants filed no pleading, affidavit or exhibit.

7. This suit was commenced under the national emergency provisions of the Act (Section 206-210; 29 U.S.C. 176-180).

8. Collective bargaining agreements between the Union and the employer defendants were to expire on June 30, 1959, and negotiations for new agreements with the major employers in the industry began early in May. Shortly before the expiration of the agreements, at the request of the President of the United States, the parties extended those agreements until July 1. On that date there was still no settlement of the dispute, and at midnight a strike began. The strike has at all times been legal in every respect. Negotiations have continued almost without interruption since the beginning of the strike, but with little apparent progress.

9. The strike affects a substantial part, but not all, of the basic steel industry. A large number of basic steel producing plants and related operations were not shut down, because the Union had successfully negotiated extension agreements covering some of those operations, and others are either unorganized or organized by some other union. The plants still operating at the time the case was heard constituted more than 15% of the capacity of the basic steel industry, and were capable of producing steel at a rate of more than 22½ million ingot tons per year.

10. At the time the action was brought, only 265,000 people other than strikers, were unemployed due to the strike, and total unemployment was substantially below the average unemployment for the year 1958 as a whole, and even further below the worst point of the 1958 economic recession, when nearly 5½ million people were unemployed. Despite the strike, the national economy is operating at a rate of gross national production substantially above that of 1958, measured in uniform dollars. Total steel production in 1959, even if the strike were to continue for the balance of the year, would not be greatly below the 85¼ million ingot tons produced in 1958, since for the first nine months of 1959 alone, steel production was nearly 72½ million ingot tons.

11. The plaintiff has not specified which types of steel, if any, necessary for national defense are not obtainable from the steel plants now operating, from inventories or from imports. Moreover, the Government has not proved that such types of steel, if any, could not be obtained through the statutory procedures designed specifically to assure the supply of materials needed for defense or by reopening a very small number of mills. The Government has not required, as it did in the 1956 steel strike, that all steel supplies of special types needed for defense be held and shipped exclusively for defense purposes and took no special steps of any kind prior to October 16, 1959, to insure the allocation of existing production and supplies of steel for defense purposes. The Union has offered to cooperate with the government in assuring the supply of any steel vital to the defense effort and has so cooperated when requested by the Government. The plaintiff has not shown in any case in which the Union has failed to cooperate upon request to this end.

12. The plaintiff has not proved that the strike will be continued indefinitely if not enjoined. Experience in the 1950 coal strike, the opinions of recognized experts in the field of labor relations, and the evidence in this case, indicate the probability of a negotiated settlement in the event the strike is not enjoined.

13. The plaintiff has not proved that the strike, if not enjoined will imperil the national health or safety.

CONCLUSIONS OF LAW

1. Plaintiff has failed to prove by a preponderance of the evidence that the steel strike, if permitted to continue, will imperil the national health and safety. This Court, therefore, has no jurisdiction to enjoin such strike under the provisions of Section 208 of the Labor-Management Relations Act of 1947 (29 U.S.C. 178).

2. The Court has discretion under Section 208 of the Labor Management Relations Act of 1947 (29 U.S.C. 178) to deny an injunction when the public interest will best be served by settlement of the strike through good faith collective bargaining and not by the issuance of an injunction which will merely postpone continuation of the strike for 80 days.

3. The national emergency injunction provisions of the Labor Management Relations Act of 1947, Section 208 (29 U.S.C. 178) are unconstitutional and void in that these provisions attempt to confer on the federal courts powers which are unrelated to a "case" or "controversy" and therefore outside the limitations of Article III, Sec. 2 of the United States Constitution.

4. Defendant, United Steelworkers of America, is entitled to an order dismissing the petition for injunction applied for by the United States of America.

United States District Judge

Dated .....

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,
PLAINTIFF,

v.

UNITED STEELWORKERS OF AMERICA, et al.,
DEFENDANTS.

Civil No. 18242

ORDER

This cause having come on for hearing on the 20th day of October, 1959, upon a petition of the United States of America for an injunction pursuant to Sec. 208 of the Labor-Management Relations Act of 1947 (29 U.S.C. 178), and the parties having stipulated by their respective counsel that (1) the defendants, and each of them, waive service of process and submit themselves to the jurisdiction of the Court, (2) the case be submitted to the Court for final hearing immediately upon the filing of the petition and (3) at such hearing all parties submit their evidence by way of affidavits and exhibits, without oral testimony, and the Court having considered the evidence submitted herein by way of affidavits, the pleadings, memoranda of law and argument of counsel, and having entered its findings of fact and conclusions of law:

NOW, THEREFORE, it is this ——— day of October, 1959, by the United States District Court for the Western District of Pennsylvania, ordered:

That the petition of the United States of America for an injunction be and it hereby is dismissed.

Issued 1959

m. o'clock (EST)

/s/
United States District Judge.

OBJECTIONS OF DEFENDANT UNION TO PROPOSED INJUNCTION ORDER SUBMITTED BY THE PLAINTIFF

The following objections and proposed changes in the injunction order submitted by the plaintiff on October 20, 1959, are submitted by the defendant union for consideration by the court in the event the court should determine the issues herein in favor of plaintiff.

1. Paragraph 1 of the proposed injunction order read literally would apply to all employees of the defendant companies including those now working in unorganized plants or in plants at which the employees are represented by other unions. Such employees are not involved in the dispute, may have separate contracts with the right to strike and should not be subject to this order. It is, therefore, suggested that the proposed order be modified by omiting from Paragraph 1, on the second line thereof, the words "servants and employees." The members of the United Steelworkers of America are adequately covered by Paragraph 2 of the proposed order.

2. The proposed injunction order contains a proviso in Paragraph 2 based upon the saving provision contained in Sec. 502 of the Labor-Management Relations Act, 1947. The proviso is inadequate in that it does not contain the provision set forth in Sec. 502 with reference to abnormally dangerous conditions. Paragraph 2 of the proposed order should therefore be amended by adding at the end thereof the following language:

> "nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this paragraph."

The proviso applies only to Paragraph 2 and should also be amended to cover Paragraph 1 of the proposed order if the suggestion above as to the amendment of Paragraph 1 is not accepted.

3. In accordance with the prayer contained in the Fourth Defense of the Answer herein, and the supplemental memorandum with regard thereto submitted by the union to the court on October 20, it is suggested that Paragraph 5 of the proposed injunction be amended by adding at the end thereof the following:

> "and that the terms and conditions of any such settlement which are applicable during the first year of such settlement shall be made effective as of the expiration date of the prior agreement relating thereto, or the effective date of this injunction, whichever is later."

OBJECTIONS TO THE FINDINGS OF FACT AND CONCLUSIONS OF LAW PROPOSED BY THE PLAINTIFF

The following objections are submitted in the event the court should determine the issues herein in favor of the plaintiff.

1. The statements in proposed Finding No. 10 as to the extent of the investigation by the Board of Inquiry and the amount of time devoted to attempting to resolve the dispute by free and collective bargaining are unsupported by any of the affidavits. The report of the Board of Inquiry, which was not introduced into evidence, does state (on p. 4) that "the Board sought to mediate the dispute through discussions with the parties and also reports (at p. 37) that "the parties have failed to reach an agreement." Findings to that effect are unnecessary in the light of proposed Finding No. 2 but would not be objected to by the defendant.

2. The first sentence of Finding No. 11 is entirely objectionable and totally unsupported by the evidence. The second sentence accurately quotes the report of the Board of Inquiry but is prejudicial in that no finding is proposed based on the uncontradicted evidence contained in the affidavit of David J. McDonald that the major stumbling block to the settlement of the dispute was the anticipation by the companies that an injunction would be issued and that if no injunction should issue a settlement would be achieved within a short period of time. (McDonald affidavit, pp. 3-4) It also ignores the evidence contained in Appendix A to the McDonald affidavit, and incorporated therein by reference, to the effect that companies determined to avoid reaching agreement with the Union and planned to use an injunction against the strike as a weapon in the controversy with the Union.

3. The statemet in Finding No. 13 that the inventory of steel on July 15, 1959 was abnormally high is not, so far as we can determine, based on any statement in the affidavits submitted by the government. The Mueller affidavit, at p. 5, refers to an inventory on July 15, 1959 of 21.8 million tons of "finished steel products."

The figures as to unemployment caused by the strike contained in paragraph 13 are different than those contained in the Mitchell affidavit, at p. 2, and are erroneous in that they include employees voluntarily on strike within the number of unemployed. The findings as to the number of people, including the families of striking workers, affected by the strike are similarly defective. The statement, in the last sentence of paragraph 13, that 9 million people would probably be "directly and adversely" affected by the strike by the end of December is not supported by the Mitchell affidavit which states simply that the number of people would be affected and obviously includes indirect effects.

If a finding as to unemployment is to be made a finding should also be made based on the Bernstein affidavit (p. 10) that total unemployment in the summer of 1958 was approximately 5,347,000.

4. The last sentence in Finding No. 14 is apparently based on page 9 of the Mueller affidavit. It goes far beyond the statement there contained, however, which makes no mention of the "essential requirements" of the Department of Defense or as to "special steels." Finding No. 14 is also deficient in that it fails to state that the Business and Defense Services Administration has not taken steps, authorized by the Defense Production Act, to prohibit shipments of essential types of steel against non-essential orders, similar to those taken in the 1959 strike (Memorandum for Defendant, pp. 23-24, citing 21 Fed. Reg. 5484), or to requisition existing stocks of such steel.

5. Paragraph (a) of Finding 15 is apparently based on the Gates affidavit. The Gates affidavit, however, does not say that items of steel required by missile programs "are not made by any mill now operating, nor available from any inventory or from imports." Specifically, the Gates affidavit says only, and without specification or identification, that steel specified "in the procurement contracts" of unstated facilities (probably buildings) required to make the Polaris Weapon System operational, is not common to commercial usage or available from civilian inventories. It does not say that such steel is necessary for the Polaris Weapon System. As to the Atlas missile the Gates affidavit says only that there has been a delay in delivery; not that the steel required is unavailable. As to the Titan missile, the affidavit says that there is a shortage of special steel, without specification or identification, and does not say that such steel is not made by any mill now operating. The remainder of the Gates affidavit similarly carefully avoids specific statement of the kinds of steel required by the missile program and does not state that these unstated kinds of steel are not made by mills now operating nor available from inventory or from imports.

Paragraph (b) of Finding 15 is apparently based on the Dryden affidavit. As in the case of the Gates affidavit, the types of steel claimed to be lacking are not specified nor is it stated that such steel is not available from mills now operating or from inventory. In this connection, it should be noted that the Dryden affidavit states specifically that the National Aeronautics and Space Administration is not concerned with the "defense of the United States" and, further, that the specific delays referred to in that affidavit are "delays not in the construction of satellites but in the construction of buildings."

Paragraph (c) of Finding 15 is apparently based on the Mueller affidavit, p. 3. That affidavit does not state that the strike in the steel industry will so affect the flow of steel for the uses indicated as to irreparably injure the national defense and impair the national safety. It should be contrasted with the affidavit of the general manager of the Atomic Energy Commission as to the lack of serious delay in the atomic reactor program.

Paragraph (d) of Finding 15 is taken directly from the Mueller affidavit, p. 4. It is a pure conclusion not based on any evidentiary data.

Paragraph (e) of Finding 15 is apparently based on a combination of the Barnes affidavit and page 6 of the Mueller affidavit.

The Barnes affidavit does not state that 6 million workers are employed in industry dependent upon steel. It states only that 6 million workers are employed in all small businesses, of every character. The Barnes affidavit, at p. 3 specifically says that most of these companies are not directly dependent upon steel. The Mueller affidavit does state, at p. 6, that 6,000,000 workers are employed in industries dependent upon steel. It does not state, however, that such industries will be idled by a continuation of the strike in the near future and is to be constrasted with the unemployment figure of 365,000 set forth in the Mitchell affidavit (p. 2). None of the affidavits in any way support the final sentence in paragraph (e) as to the national health.

[Cover omitted in printing]

Wednesday, October 21, 1959
10:30 A.M.

(In Chambers.)

THE COURT: Let the record show that objections of the United Steelworkers to the proposed findings of fact and conclusions of law of the plaintiff are being considered.

Defendant's objection No. 1 is withdrawn on stipulation amending the finding.

Objection No. 2 to the plaintiff's proposed finding No. 11 is overruled.

Is objection No. 3 to the proposed finding of the plaintiff No. 13 withdrawn in view of the agreed amendment?

MR. GOLDBERG: In so far as the first sentence in that objection No. 3, that is so. But there is another part of the objection contained in the following sentences. That is not withdrawn.

MR. DOUB: Wouldn't it be well for your Honor to state the change that is being made to meet the objection of the union?

MR. GOLDBERG: May I make a suggestion, your Honor? Would it not be advisable—and I was going to ask anyhow—that before we enter this discussion the record show that we offer proposed findings? And I take it that your Honor is overruling those if you are proceeding to the government's findings. Is that correct, or is that an erroneous assumption?

THE COURT: It is not, to the extent that the rulings are consistent.

MR. GOLDBERG: That is what I assumed.

I would like the record to show that the union offered findings of fact and conclusions of law and an order based upon those findings of fact and conclusions of law and ask that they be made a part of the record for this case.

THE COURT: The motion is granted.

MR. GOLDBERG: Then if I may make a suggestion, if the government would offer its proposed findings it would become clear from the record what changes we have made in the findings.

MR. MacGUINNEAS: They were tendered to the court at the session yesterday.

THE COURT: Proposed findings of fact and conclusions of law by the government have been received and are being considered.

MR. DOUB: And will be included in the record.

THE COURT: And are included in the record.

MR. GOLDBERG: Now I would like to ask that the objections of the defendant union to the proposed findings of fact and conclusions of law proposed by the plaintiff be included in the record.

THE COURT: The motion is granted.

MR. GOLDBERG: Now, your Honor, I think our objection to the balance of the matters referred to in paragraph 3 is self-explanatory. I don't think I can add anything to what I have said there.

THE COURT: Do the government or the employer defendants desire to be heard?

MR. MacGUINNEAS: As to the first point raised by the defendant union, I understand him to state that the figure as to the number of unemployed is erroneous in that they include employees voluntarily on strike. Of course it is true that they do include such employees, but in our view those people are unemployed. They are not working. And therefore the statement is correct as it is.

MR. GOLDBERG: I wish we could have Mr. MacGuinneas on our side when we try to get unemployment compensation.

MR. MacGUINNEAS: As to the next point where he objects to the phrase, "directly and adversely affected," the government

is willing to eliminate from the last line of its proposed finding 13 the words, "directly and adversely."

THE COURT: Proposed finding No. 13 has been amended by deleting the words, "the abnormally high figure of," in the fifth line thereof and the words, "directly and adversely," in the last line thereof.

The objection to the proposed finding No. 13 as amended is overruled.

MR. GOLDBERG: The next objection is set forth in paragraph 4. I have nothing further to add to what we have set forth there.

MR. BANE: I thought they were basing that on the Saulnier affidavit. I don't know.

MR. DOUB: We were basing it on the affidavits of both the Secretary of Commerce and the Secretary of Defense.

If the court please, in paragraph 12 of Mr. Mueller's affidavit, it is stated: "Although this order"—that is referring to a priority order—"will enable the Department of Defense to obtain some needed items in connection with these programs, there are many items which are not carried in inventory or produced by the plants still in operation."

Then on page 3, paragraph 3, of the same affidavit it is stated: "Certain items of steel required in the top priority missile programs are not made by any mill now operating nor available from any inventory or from import."

THE COURT: The objection to the proposed finding No. 14 is overruled.

MR. GOLDBERG: In paragraph 5 we have likewise fully explained our objection to this finding. I have nothing to add to that.

When I say "fully," I mean I think adequately. It will take much more than this to do it as fully as might be done.

MR. DOUB: The first sentence of 15(a) is the sentence I read from the Mueller affidavit and is a precise repetition of it.

It is also supported by the statement on page 5 of Mr. Gates' Secretary of Defense: "Immediate release of items which may be wholly or partially fabricated by the presently struck plants will offer but temporary relief, in that it is vitally essential to the completion of these programs that are scheduled that an uninterrupted flow of steel be maintained."

And from the same affidavit of Mr. Gates, on page 2, he says: "In summary, the shortage of steel for the missile program is not a problem solvable by the mere exchange of other types and forms of steel available in inventories still existing for other purposes or in commercial stock."

THE COURT: Is the paragraph (a) of the proposed finding under 15 supported by an affidavit in the respect objected to by the union?

MR. MacGUINNEAS: Your Honor, in answer to your Honor's question, the first sentence of proposed finding 15(a) is taken directly from a sentence on page 3 of the Mueller affidavit. I read: "Certain items of steel required in the top priority missile programs are not made by any mill now operating nor available from any inventory nor from imports."

And the second sentence of proposed finding 15(a) is supported by the Gates affidavit, page 2, and I read: "In my opinion and in the opinion of those persons in the Armed Services who have the greatest knowledge of these matters, such a point has now been reached"—and that refers back to the preceding sentence, "Beyond a certain point of delay in normal deliveries there occurs an irreparable injury to the national defense and consequently to the national safety."

Dropping down to the following paragraph, he says, "Such a point has now been reached that any further delay in resumption of steel production would result in an unretrievable loss of time and/supply of weapon systems essential to the national defense plans of the United States and its allies."

THE COURT: Paragraph (c) of proposed finding No. 15.

MR. MacGUINNEAS: The union also objects to paragraph (c).

THE COURT: I understand, but it appears that the objection is based largely on the fact that the affidavits pertain to delay not in the construction of satellites but in the construction of buildings, and the finding appears to conform to that observation.

The objections to paragraphs (a) and (b) are overruled.

We will now direct our attention to paragraph (c). Is this paragraph (c) supported?

MR. MacGUINNEAS: Yes, Your Honor. The first sentence of proposed finding 15 (c) is supported by the Mueller affidavit, page 3, paragraph 3, which says: "The defenses of the nation are particularly dependent upon uninterrupted flow of steel for such uses as the building of missiles and launching sites, ships, tanks, aircraft and their engines, and atomic reactors for naval propulsion." And then later on in that same paragraph he says: "The observations herein regarding the effect of a continuation of the steel strike on steel-consuming industries apply equally to the production of ordnance items and other military equipment and weapons. Certain items of steel required in top priority missile programs are not made by any mill now operating nor available from any inventory or imports." And then at the bottom of the page he says: "It is clear that a continuation of the steel strike will lead to extended

delays in military construction or production, including missile and satellite programs."

And I think it is further supported by the affidavit of Mr. Gates, where he says on page 4: "The delays which have now occurred are only a foretaste of the increasingly greater delays to come if immediate resumption of work in the steel plants does not occur."

I don't understand the union's objection to paragraph three to state—I beg your pardon. I withdraw that statement.

THE COURT: Now we have before us the statements that the uninterrupted flow of steel is necessary for the purposes mentioned: Has delivery of steel for such purposes been interrupted?

MR. GOLDBERG: Your Honor, may I just observe that we read the affidavits very carefully and we found nothing in any of the affidavits that said that the strike has interrupted the flow of steel, and in the Atomic Energy affidavit we found an affirmative statement that it has not.

MR. MacGUINNEAS: Well, perhaps it would meet the union's objection if we revised paragraph 15 (c) to state literally what Mr. Mueller states in his affidavit. And I will read that into the record, if the court desires.

MR. DOUB: "The strike has interrupted the flow of steel for such uses as the production of ordnance items and other military equipment and weapons." And that would be in lieu of the first sentence of (c) now, Your Honor.

MR. GOLDBERG: Would you read that again?

MR. FELLER: What page of the Mueller affidavit?

MR. DOUB: I have used the precise language of Mr. Mueller on page 3, paragraph 3, the third sentence.

(To reporter) Would you read that back?

(Preceding remark of Mr. Doub read.)

MR. GOLDBERG: Where do you find that, George? Because I don't find that in the affidavit.

MR. DOUB: What he said was "The observations herein regarding the effect of a continuation of the steel strike on steel-consuming industries apply equally to the production of ordnance items and other military equipment and weapons."

MR. GOLDBERG: Well, we could not accept your statement other than a transposition of what Mr. Mueller has said. He has many observations in his affidavit. And it is rather interesting to us that the Secretary of Defense, who has knowledge of these matters, doesn't say this.

MR. DOUB: If Your Honor please, may I try again?

THE COURT: Go right ahead.

MR. DOUB: On paragraph 15 (c), from the Gates affidavit on page 5 I quote: "Major work stoppages have already occurred in

the construction for nuclear submarines. The naval shipbuilding program other than submarines, including new construction, modernization and conversion, has been affected by reason of the inability to secure boilers, compressors and other component parts requiring steel."

MR. GOLDBERG: I think, Your Honor, that that is a finding which cannot be properly made in this lawsuit. The affidavit is not that this work stoppage has anything to do with this. This refers to major work stoppages, those—as I pointed out yesterday—like the construction stoppages already settled. It might be a shipbuilding strike, which has been—which never occurred in some areas, and which I think is over in others. As far as I know, the companies defendants do not produce boilers, compressors and other component parts. You are now asking to wander far afield and make observations about other conflicts. We think this one is a big enough one for us to be concerned with.

MR. DOUB: Well, there is nothing in the record, Your Honor, about work stoppages other than the one that we are all dealing with here. And if you read Mr. Gates' affidavit as a whole, I think it is apparent that everything he said was with reference to this dispute and the result of the steel strike.

MR. GOLDBERG: Your Honor, I would just like to observe that we have nothing to do in the Steelworkers Union with the construction of nuclear submarines or naval shipbuilding program or boilers, compressors and matters of that character. And all he is saying here, as I understand Mr. Gates, is that stoppages have occurred and that those stoppages have affected—are affecting this program by reason of the inability to secure boilers, compressors and other component parts requiring steel. He doesn't lay that to us.

MR. DOUB: He is saying that the flow of this construction has been prejudiced and affected by the inability to secure these steel items.

MR. GOLDBERG: And by reason of these stoppages. I don't know that he means our stoppage. At least I have an affidavit and I can't read him to say that.

MR. MacGUINNEAS: May I respond to that, Your Honor?

THE COURT: Proceed.

MR. MacGUINNEAS: The statement in Mr. Gates' affidavit which talks about major work stoppages in construction of submarines, etc., is preceded by the sentence which says, "The foregoing description of the effect on the missile programs is paralleled in many other areas of the national defense effort." And the next sentence, of course, is the other areas in which it is parallel. So if you go back to the preceding pages, where he talks about the de-

lays in the development of the missiles programs, he specifically says, for instance, on page 4: "Also directly affecting the Polaris weapon system is a shortage of special plate steel required to meet the construction schedules of the nuclear submarines now being built for the launching of Polaris missiles. The same lack of steel has already caused the planned starting date of an additional nuclear submarine for this purpose to be put off." And then before that he says the "point has now been reached and any further delay in resumption of steel production would result in an unretrievable loss of time in the supply of weapons systems essential to national defense."

So he directly lays the delay in the missiles programs to the lack of steel production, and he says a parallel situation occurs on these other items, including submarines, and so forth. So obviously he is saying there that the same cause is the cause of both situations, to wit, the lack of steel resulting from the strike.

MR. GOLDBERG: But, Mr. MacGuinneas, you have covered that prior statement in paragraph (a).

MR. MacGUINNEAS: Paragraph (a) deals only with the delay in the weapons program. We are now talking about the delay in the naval shipbuilding program, et cetera.

MR. GOLDBERG: If you are trying to say that Mr. Gates meant to say that by using the word "parallel", I would say that that is not a competent way of testifying.

THE COURT: He mentions ships, tanks, aircraft and their engines.

MR. GOLDBERG: There is an affidavit from the Maritime Commissioner which talks about the Merchant Marine but, as we point out, he is not competent to talk about the defense needs of the nation. And then he refers—I assume he refers to military, naval ships.

MR. MacGUINNEAS: Well, Mr. Gates does mention the naval shipbuilding program, which is these naval vessels. And Mr. Mueller on page 3, paragraph 3, of his affidavit mentions specifically "ships, tanks, aircraft and their engines, and atomic reactors for naval propulsion."

MR. GOLDBERG: Mr. Mueller says that, but he doesn't say they were interrupted.

THE COURT: That is where we started.

MR. GOLDBERG: So we are trying to find out who said they were interrupted.

MR. DOUB: I think there is a valid point which Mr. Goldberg has made, Your Honor, on that. It may be that Mr. Mueller intended to say what we have him saying in (c), but he was not explicit enough about it for you to embody a finding based upon [illegible]

don't believe Mr. Goldberg's point is valid although as applied to the last alternative which I dictated for the record, which is precisely what Mr. Gates said.

THE COURT: You propose then to insert, instead of the first sentence of subparagraph (c), as a finding that "Submarines and naval shipbuilding programs other than submarines, including new construction, modernization and conversion, have been affected by reason of the inability to secure boilers, compressors and other component parts requiring steel." Is that what you propose to insert?

MR. DOUB: Yes, Your Honor.

THE COURT: — in lieu of the first sentence of subparagraph (c).

MR. FELLER: May we have that read, Your Honor?

(Previous remark by the Court read.)

MR. MacGUINNEAS: Would Your Honor add the word "nuclear" before "submarines"? Mr. Gates speaks of nuclear submarines.

THE COURT: Where does he discuss nuclear submarines?

MR. MacGUINNEAS: On page 3, the last word on line 1.

THE COURT: The Gates affidavit?

MR. MacGUINNEAS: Yes, Your Honor.

THE COURT: Page 3?

MR. MacGUINNEAS: The last word on line 1 is "nuclear", preceding "submarines" on the next line. Is there some mistake.

THE COURT: I have another copy. "Nuclear submarines" is in the first line of my copy. Yes, that will be satisfactory.

MR. MacGUINNEAS: I see. You have the original affidavit. We haven't, Your Honor.

MR. GOLDBERG: And I need not state, Your Honor, that I object to this as well as the originally proposed finding.

THE COURT: Yes, that is right.

MR. GOLDBERG: For the reasons that I have stated.

THE COURT: And Mr. Gates does go on to say: "The immediate release of items which may be wholly or partially fabricated, but are presently in struck plants, will offer but temporary relief in that it is vitally essential to the completion of these programs as scheduled that an uninterrupted flow of steel be maintained."

The court has ruled that the objection to subparagraph (c) as amended is overruled.

MR. DOUB: May we have that read back?

THE COURT: Well, it was the intention of the court to have it read this way: "The naval shipbuilding program other than nuclear submarines, including new construction, modernization" Is that the intention that the Government has?

MR. MacGUINNEAS: No, Your Honor; that is not what Mr. Gates says. He says, "major work stoppages have already occurred

in the construction for nuclear submarines; the naval shipbuilding program other than submarines" — in other words, both nuclear submarines and navy ships other than submarines are being held up.

THE COURT: Will you submit then a proposed finding to that effect?

MR. MacGUINNEAS: Yes, Your Honor.

MR. GOLDBERG: You will note, Your Honor, in paragraph (d) I acknowledge that this is taken directly from the Mueller affidavit, but state that this is a pure conclusion, not based on any evidentiary documentation.

THE COURT: The objection is overruled.

The statements made in subparagraph (e) are taken directly from the affidavits?

MR. MacGUINNEAS: In our opinion they are, Your Honor. If you will refer to the Barnes affidavit, Small Business Administrator, he first says on page 2, paragraph Fourth, that there are 1,300,000 small business concerns directly or indirectly dependent upon an adequate supply of steel or steel products.

MR. GOLDBERG: Mr. MacGuinneas hasn't read that entirely. It says a substantial number of the 1,300,000 small business concerns.

MR. MacGUINNEAS: I beg your pardon?

MR. GOLDBERG: I am reading from paragraph Fourth. Are we reading from the same affidavit, Barnes?

MR. MacGUINNEAS: Yes. Did I say that?

MR. GOLDBERG: I thought you said 1,300,000 are affected. I read the affidavit to say a substantial number of the 1,300,000.

MR. MacGUINNEAS: That is correct, of course.

Well, if you turn to page 4 of the affidavit, paragraph Eighth, he says if the strike should continue for an additional thirty days the business activities of a substantial number of small manufacturers and small construction firms will be curtailed; if the strike continues sixty days a substantially greater number of small businesses would be affected; and should the strike continue for ninety days the vast majority of small manufacturers and small construction firms will be forced to close.

THE COURT: Where do we get the 6,000,000?

MR. MacGUINNEAS: Yes; that is on page 1 of the Barnes affidavit, at the bottom — at the bottom of my page — small manufacturers employ approximately 6,000,000 of these 30,000,000 persons.

MR. GOLDBERG: No, that represents all small manufacturers in the United States. I trust the Government doesn't assume that all small manufacturers in the United States use steel. I know you believe a substantial number. But I have found three definitions of "substantial" in this affidavit, "substantial", "more substantial" and then finally we come to "a majority".

MR. BANE: You have an odd sense of humor, Arthur. I must try to remember that, and use it sometime myself.

MR. MacGUINNEAS: The 6,000,000 figure can be found in the Mueller affidavit, page 6, paragraph 10: "Manufacturing industries directly dependent on steel mill products account for the employment of about 6,000,000 workers, with wages and salaries totaling $31 billion at the pre-strike annual rate." That statement is directly taken from that affidavit.

MR. GOLDBERG: We pointed that out in our objections, Your Honor, if you will notice. And we went on to say that the Mueller affidavit does not state that such industries will be idled by continuation of the strike in the near future.

MR. MacGUINNEAS: Well, the degree of idling of workers in small business is covered by the Barnes affidavit. And the sentence which I read from the Mueller affidavit about the six million workers is preceded by a sentence which says: "A continuation of the steel work stoppage will have the ultimate effect of idling millions of workers and a large proportion of the facilities in industry dependent upon steel for their continued operation." That, of course, is the first sentence of our finding (15(e).

In other words, if I may pursue this, Your Honor—the first two sentences of our proposed finding 15(e) are taken directly from the second sentence of paragraph 10 of the Mueller affidavit. Perhaps Mr. Goldberg will be happier if we change the next sentence, which starts out "Such industries account for employment of approximately 6,000,000 workers," to read as stated in the Mueller affidavit, "Manufacturing industries directly dependent on steel mill products account for the employment of about 6,000,000 workers." I suggest that we make that change, Your Honor.

THE COURT: Yes, it does clarify it somewhat.

MR. MacGUINNEAS: So that I suggest that Your Honor eliminate the words "Such industries account for" and substitute the words, "Manufacturing industries directly dependent on steel mill products account for . . ."

(Note: Change of reporters)

MR. GOLDBERG: I still object to the finding for the reasons that I have stated.

THE COURT: The objection is overruled.

MR. GOLDBERG: Your Honor, at the time we prepared these objections, as you can imagine late last night, they were prepared on the assumption, as stated in the objections, that the following objections are submitted in the event the court should determine the issues herein in favor of the plaintiff. And of course we proposed alternate findings and conclusions.

Therefore, at this time I would like to object to all matters not specifically objected to by the defendant union but inconsistent with the proposed findings tendered by the union.

Specifically, I would like to object to the ultimate finding, finding 16, which is the finding relating to the national health and safety, and I object to this finding as totally objectionable and completely unsupported by the evidence in the record.

THE COURT: The objection is overruled.

MR. GOLDBERG: In the same sense there is a finding in the first sentence of paragraph 50 "That the strike which has now been in existence for more than 95 days, if permitted to continue will imperil the national health and safety in the following respects," and while I have objected to some of the respects, I object to the finding that if the strike "is permitted to continue it will imperil the national health and safety," as completely unsupported by any evidence in the record.

THE COURT: The objection is overruled.

MR. GOLDBERG: Now, your Honor, we have not dealt with the conclusions of law. Is it your intention that we now proceed to deal with those conclusions?

THE COURT: Proceed.

MR. GOLDBERG: The defendant union objects to each and every one of the conclusions of law tendered by the plaintiff, United States of America, and proposes that in lieu of these conclusions of law the conclusions of law tendered by the defendant union be accepted by the court as appropriate conclusions of law.

THE COURT: The motion is denied.

Now, we have a motion by the employer defendants.

MR. BANE: I'd like to make an oral motion relation to the findings of fact proposed by the Attorney General. It is a matter concerning which I spoke a few moments ago or a little earlier this morning. It relates to the statement in paragraph 6 that the defendants, except the union, by stipulation waive the right to file any responsive pleading, and so on.

As I have explained this morning, Mr. Montague and I represent between us all of the defendants, I am quite sure, except one and that company is Brown & Company.

I think it will be agreed here that since Brown & Company is in peculiar circumstances, which I described, it is understood that we do not represent them, that they have not been served. I am willing that the case be dismissed as against them.

MR. DOUB: You move that they be dismissed?

MR. BANE: I consent.

THE COURT: Any objections?

MR. DOUB: I will move that that company be dimissed, and I understand it is consented to by counsel for the employer defendants.

THE COURT: This defendant has not been served nor has any body appeared on its behalf. Is that correct?

MR. BANE: That is correct.

THE COURT: The motion is granted.

What is the name of the company?

MR. LEATHERS: Brown & Company. It is the fifth company down from the top of the second page of the list.

MR. BANE: Perhaps I had better add that today I am prepared to enter my appearance for Judson Steel Company of Oakland, California.

MR. GOLDBERG: No objection to that on the part of this defendant.

MR. MacGUINNEAS: Your Honor, in view of the agreement as to Brown & Company, I suggest that we revise finding of fact No. 6, so that is will read, "The defendants except the union and Brown & Company, by stipulation, waived," and so forth.

MR. GOLDBERG: Is that necessary if they are dismissed from the suit?

MR. MacGUINNEAS: Shouldn't your findings accord with the dismissal?

THE COURT: That is No.

MR. MacGUINNEAS: Six.

THE COURT: At the time the findings of fact will be filed, this company would not be a defendant.

MR. BANE: I think the dismissal of this defendant terminates any interest we have in them in this case and we need not make any alteration of the findings on their account.

THE COURT: Correct.

MR. BANE: We have no other comments on the findings proposed by the Attorney General or on his conclusions of law.

THE COURT: In argument yesterday, counsel have referred to the communication from the President to the Attorney General and there was some discussion as to whether the statement to the effect that a continuation of the strike would imperil the national health and safety was an opinion or whether it was a statement of fact. So we re-examined that communication.

Do counsel desire to comment on it?

MR. DOUB: The Statute required the President to be of the opinion, and I think, as I recall it, that his directive to the Attorney General is cast in those terms, as well as the executive order appointing the board of inquiry.

As I said yesterday, Your Honor, I feel that it is a mere matter of semantics. I don't think that there is any major significance or any significance between making a finding and expressing an opinion. Actually, I suppose "opinion" is more accurate because his opinion relates to future effects of the strike. He says "continuance of the strike will imperil."

THE COURT: Will you refer to the second paragraph of the executive order?

You will be given your opportunity to be heard, Mr. Goldberg.

MR. GOLDBERG: Yes, Your Honor.

MR. DOUB: Of course, Your Honor, this expression of opinion by the President of the United States is not conclusive upon Your Honor and the Statute contemplates that you will make an independent finding. The tenor of my argument yesterday was that the finding was entitled to great weight and was presumptively correct and there was a heavy burden cast upon anyone taking a contrary position. That is all I meant to say.

THE COURT: I understand. It appears, however, that in the executive order the expression of an opinion refers to the substantial part of the steel industry and then goes on to say, "and which strike will, if permitted to continue . . .

MR. DOUB: That is using, I think, the exact language of the Statute.

THE COURT: All right. Now, we have several other motions. One by the Steelworkers.

Do you desire to be heard, Mr. Goldberg?

MR. GOLDBERG: No, I did not, Your Honor. I was talking to one of my associates at that time.

THE COURT: Does counsel desire to argue the other motions?

MR. BANE: We have some comments on the form of decree suggested by the Attorney General, which we have given to him this morning and served also on our co-defendants, the union. I don't want to argue them but I would like to let it be known that we really mean what we say.

MR. GOLDBERG: On the part of the union, Your Honor, it is not my desire to prolong this. We gave you our memorandum and we also submitted our objections to the proposed order. I have nothing to add except to answer any questions the court may wish to direct to me in this area.

MR. BANE: Might I say, it occurred to me that everybody might agree to the suggestions we made relating to the form of decree, omitting the question of retroactivity. I don't expect Mr. Goldberg to agree with me on that. But these others in the paper entitled, "Comments on Behalf of Employer Defendants on the Form of Injunction Decree Presented by the Plaintiff, United

States of America," which paper, by the way, I should like to have filed as a part of the record if the court will allow—

MR. GOLDBERG: John, it would seem to me that I have one agreement, and that is the one you suggested to the Attorney General about subsidiaries.

MR. BANE: That is one of my comments.

MR. GOLDBERG: There, Your Honor, I think I have to report to you that we have agreed about some language, subject, of course, to my over all objection to the order.

THE COURT: I understand.

MR. GOLDBERG: On that problem.

The other matter that you referred to about the interpretation of the decree, it seems to me that that doesn't offer any extended comment. We are not in agreement with you. I presume his Honor will always be able to interpret his order if it becomes necessary.

MR. BANE: We are not asking so much for an interpretation of the order anyway. We are suggesting that the court should reserve these matters which may never require any attention.

MR. GOLDBERG: I have just assumed that the court will retain jurisdiction in the case for any appropriate purpose.

MR. BANE: Very well.

MR. GOLDBERG: That is inevitable in an equity case.

But I am not in agreement with you on your statements made there. You have made them and I am not in agreement.

MR. BANE: Very well. We understand.

MR. DOUB: Let me see, Mr. Bane, if I understand you. As I interpret your memorandum—

MR. BANE: My comments.

MR. DOUB: Your comments. You propose that in paragraphs 1 and 2 of the injunction order, which we have submitted for consideration by the court, there be included the words, "or their subsidiaries," because we have inadevertently failed to include certain subsidiary companies.

We tried to make our complaint very comprehensive and to list the subsidiaries. But I would have no objection to the insertion of those words in paragraphs 1 and 2, "or their subsidiaries."

THE COURT: It is agreed among all counsel then that the phrase, "or their subsidiaries," be inserted.

MR. GOLDBERG: We agreed to that, your Honor, in our conversation, on the assumption that certain additional language would be deleted, the language following "subsidiaries."

MR. DOUB: Shall we take that up separately? You have a number of points on the order and I think they should be discussed.

MR. GOLDBERG: I haven't discussed those yet, Mr. Doub. We are now referring to a discussion we had on the agreement as to

this matter and there we agreed that some language would be deleted and "subsidiaries with respect to whom the union is now on strike" would be inserted. I think we gave that language to your associate, Mr. MacGuineas.

MR. DOUB: As I understand it, your Honor, the union proposes, in paragraph 1, page 2, line 3, that these words, "and their subsidiaries," be inserted after the words, "employers defendants"; that there be stricken out our description of the steel industry, the character of operations affected by the order, merely substituting "with respect to which the defendant union is now on strike."

I wouldn't object to those words, "with respect to which the defendant union is now on strike," being perhaps included just before the "be," after the description, but I do think this order should be explicitly clear to show the type of operations that it is applicable to, because these companies are engaged in some activities other than steel. They produce copper and some other materials that are unrelated to steel production.

Now we have tried and we have given a great deal of careful attention to attempting to describe these operations in a way that will include all the essential elements in the process of making steel, including mining of iron ore, transportation of iron ore, production of iron ingots, the inclusion of the component materials essential to the production of steel, but excluding anything else.

THE COURT: Mr. Goldberg?

MR. GOLDBERG: Your Honor, this is the problem and I think we share it with the industry. We did not seek to get into detail about what is the steel industry and its related parts. If we had, we would have objected in detail to the inclusion of a number of defendants. And indeed the record should show that we did not object only for the purpose of this case, because in governmental hearings and in other important matters the question of what companies are in the steel industry is a term of art.

On the other hand, the government's definition is not an adequate definition and when we discussed it with counsel for the company we both came to the conclusion that it was not. Hence, for example, from their standpoint—now I am speaking their words—the warehouses are obviously an important part of this controversy. And indeed warehouses companies are named specifically as parties defendant. And yet the government's definition, if I read it correctly, would not include them.

We thought—Mr. Bane, Mr. Morris and I, when we discussed it—that we would do it in a shorthand way, which would be "the subsidiaries whom we have struck," and in our joint opinion those

subsidiaries either are in the steel industry, related to the steel industry, or have something to do with the steel industry.

Our definition, however, is broader than the government's definition, which would exclude even some of the named defendants in the case.

MR. DOUB: If the court please, we would not object to the inclusion in the third line of the first paragraph of page 2 of the words, "and their subsidiaries," to be followed by the suggested language requested by Mr. Goldberg, which would be "with respect to which the defendant United Steelworkers of America is now on strike."

I think there should be inserted right before "the defendant," the words, "the members." "With respect to which the members of the United Steelworkers of America are now on strike."

But we would not wish to strike out the succeeding language describing these operations. In other words, it would be that insert without any deletion.

MR. GOLDBERG: It still doesn't answer the problem, because the "pertaining," then is a qualification upon the order and would leave the dispute unaffected in these other operations.

Your Honor, I shouldn't really be arguing this. The industry should. It might be quite agreeable to the industry to have some of their operations remaining on strike, but I thought in all fairness I ought to call your attention to the problem.

MR. BANE: Would it be agreeable to Mr. Doub to include a reference to the sale and distribution of iron and steel and products thereof? That would bring the warehouse companies in and you have included the warehouse companies as defendants in this case.

MR. DOUB: Do you have any objection to that, Mr. Goldberg?

MR. BANE: If Mr. Goldberg had any objection, he might say it doesn't go far enough.

MR. GOLDBERG: I think I should make the record clear in one respect, as I think I am beginning to understand the concern of the Attorney General. It is not my purpose to lead the government into any trap in this area. I have a basic objection that the national health and safety is not involved and that many plants and many processes are being enjoined, sought to be enjoined by the government's own complaint in the companies named. It is not my purpose in calling the court's attention to the fact to later argue on appeal that a particular warehouse is involved or not involved. This is not intended to enlarge the scope of the argument I made to the court.

We are dealing, I think now, with the practicalities of an order and we have to make clear, and I will have to make clear for the union, to whom the order applies, what subsidiaries of the defend-

ants are instructed, if the court signs the order, to terminate the strike. I must know that with precision, so that I will not be in any difficulty.

Having said that, I just now will be silent, as long as I understand what is involved.

THE COURT: Will counsel confer and seek to phrase the proposed order in a manner that is agreeable to all of you, subject, of course, to all objections to the order itself?

MR. BANE: I will say one thing on the record. I think it is quite possible that Arthur Goldberg will agree with me. That is this: That if an order is entered in the form Arthur Goldberg has suggested, my clients will not object at any time later in the case that the emergency proceedings conducted by the President and the board had no reference to any emergency in copper, for example.

MR. GOLDBERG: That is correct.

MR. DOUB: Off the record on this.

THE COURT: Off the record.

(Further discussion off the record.)

MR. BANE: I asked a while ago if the court would allow me, I don't know whether it is on the record or not—to file our "Comments on Behalf of Employer Defendants on the Form of Injunction Decree Presented by the Plaintiff," and the court agreed to allow me to do so.

I renew my motion for leave to file.

THE COURT: The court reserves decision on the question raised as to the application of a cost of living provision in the contract which expired on June 30, 1959.

MR. BANE: Or any other similar question, Your Honor.

THE COURT: And other similar questions.

MR. GOLDBERG: That I object to, Your Honor, because that is a broad encompassing provision. We can not be running in to you as a grievance committee. I don't think you ought to assume that obligation. There is only one question which has been called to your attention and that is the cost of living question. If there are any other questions they ought to be told to you. I don't know of any other questions.

MR. BANE: Neither do I.

MR. GOLDBERG: Then we ought to leave it there.

THE COURT: All right. The court will reserve decision on the question raised.

I agree that it would be inappropriate to reserve a decision on no question.

MR. GOLDBERG: Your Honor, lastly, we have proposed that the fifth paragraph of the proposed injunction be amended by

adding at the end the following: "And that the terms and conditions of any such settlement which are applicable during the first year of such settlement shall be made effective as of the expiration date of the prior agreement relating thereto or the effective date of this injunction, whichever is later."

MR. BANE: Of course we object to that. That is the retroactivity question which Mr. Goldberg is raising, I believe.

MR. GOLDBERG: That is correct.

MR. BANE: We would object very strongly to that, for reasons stated in paper entitled, "Memorandum in Behalf of Employer Defendents on the Question of Retroactivity," to which is attached first a copy of a decision of a court in New York and second an affidavit taken by Kenneth Field on November 21, 1959, relating to the history of retroactivity in the United States Steel Corporation.

My memorandum and the affidavit are intended to show why we are sure the court should not allow any retroactivity in the decree of injunction in this case. We are prepared to argue the matter orally or to submit it on papers, whichever the court desires.

I have asked leave, though, to file my memorandum on behalf of the employer defendants and to file with it the affidavit of Kenneth Field, as a part of the record in this case.

MR. GOLDBERG: Now may I make a suggestion on this issue? I think we could spend a great deal of time.

THE COURT: I am sure.

MR. GOLDBERG: I have not had time to analyze Mr. Bane's memorandum. I would like to suggest that this matter be reserved, along with the cost of living matter. We could then discuss it at any time Your Honor might think appropriate.

MR. BANE: That is quite agreeable to us, but of course that means the court won't call for retroactivity in the injunction decree if it is issued.

MR. GOLDBERG: It means the court will do precisely what he did on the other matter and will reserve decision.

MR. BANE: That is agreeable to us.

We have served the same papers on the government.

THE COURT: The motion to amend the proposed order and the reserving of the decision would have the effect of delaying possible entry of an order.

MR. GOLDBERG: I didn't intend it that way, Your Honor. I would assume that Your Honor would want to enter an order. And you reserve the motion we made to amend that order in this respect, that you could pass on at some subsequent time. I would not delay the issuance of the order unless the whole order is stayed. But that was not my intention.

THE COURT: I see your point.

Now would you explain, Mr. Goldberg, what power this court might have on that particular score? It occurs to the court that it is a collective bargaining point and I would hesitate to become party to the dictation of terms and conditions of employment, and that would have to do with wages just as much as it would have to do with working conditions.

MR. GOLDBERG: I think the court, being a court of equity, has the right to impose conditions on his order that the court may deem equitable.

THE COURT: I understand that I would have the right.

MR. GOLDBERG: I am hopeful that this issue will be resolved by a settlement and it therefore won't be necessary for the court to pass on this.

THE COURT: I understand. The court will reserve decision on a motion to amend.

MR. GOLDBERG: That concludes the observation on the form of the order.

I have some problems that I would like to discuss if an order is entered, whenever you would like me to do that. Questions of stay and so on.

THE COURT: Shall we do that immediately?

MR. GOLDBERG: Any time you say.

THE COURT: I guess that is a matter between you and me.

Has any counsel anything further to bring before the court at this time?

If not, this hearing is concluded.

MR. GOLDBERG: May I, your Honor, before we go back to our formal sessions, express our appreciation of the courteous reception we have had here and the court's patience in the handling of this matter.

THE COURT: You have been very courteous too.

MR. BANE: We have no further comment.

It would be helpful if Arthur would tell us as soon as he makes up his mind, if an order should be entered against the union and us in this case, that he intends to take an appeal, or does he intend to ask for a stay? My clients have asked me.

MR. GOLDBERG: I didn't want to be presumptuous. I am going to make some motions in open court if the court hands down an order, which would provide the answers to those questions.

THE COURT: Will you stay for a few minutes then, Mr. Goldberg?

MR. GOLDBERG: Yes, sir.

MR. DOUB: If there is an appeal entered and an application for stay, the government does wish to be heard.

THE COURT: I understand. That would be one of the motions you would desire to make in open court.

MR. GOLDBERG: That is correct.

THE COURT: We will all convene at two o'clock, in the courtroom.

(Recess taken at one o'clock p.m. until two o'clock p.m., same day).

AFTERNOON SESSION 2:00 P.M.

(In open court)

Present: Counsel as hereinbefore noted.

THE COURT: For the information of the counsel and the parties, the court is about to sign findings of fact and conclusions of law which are in effect that the evidence which has been submitted in this case establishes that a prolonged steel strike has become inimical to the general welfare of the people and the security of our nation. Its far-reaching effects are imperiling the public health and safety.

I am also about to sign an injunction in accordance with the provisions of the Labor-Management Relations Act which are designed to make possible further negotiations in an attempt to settle the dispute of the union and management in this case while the steel workers and the steel industry are producing the basic goods which our country needs.

Now, does counsel desire to be heard before the court signs the injunction and findings of fact?

Mr. Goldberg.

MR. GOLDBERG: May it please the court, as result of the conference this morning that Your Honor was kind enough to permit us to fully participate in I am of course cognizant of the terms of the injunctional order and of the findings of fact. I wish the record to show, as I think it already does as a result of our meetings in chambers, that the defendant union objects and excepts to each and every finding of fact and conclusion of law and objects to the entry of the order.

After the order is entered I should like to be heard with respect to some motions.

THE COURT: Do you desire to be heard, Mr. Doub?

MR. DOUB: No, Your Honor.

THE COURT: Mr. Bane?

MR. BANE: We have nothing to say, Your Honor.

THE COURT: The court will sign the findings and the order. Will Mr. Goldberg and Mr. Doub and Mr. Bane please come to the bench?

(Conference at side bar, off the record.)

THE COURT: Mr. Goldberg.

MR. GOLDBERG: May it please the court, it is a matter of duty on my part, in view of the transcendent importance of this case, which Your Honor has recognized—not the way I would have liked—to advise the court that the defendant union will appeal the decision of this court to the United States Circuit Court of Appeals for the Third Circuit.

Accordingly, I wish to file with the clerk our notice of appeal, a designation of the record on appeal.

And now, with the court's permission, I should like to present a motion for a stay pending appeal, and to make a few remarks in connection with that motion.

THE COURT: You may proceed.

MR. GOLDBERG: In this case, and in light of the circumstances of this case, it seems wholly appropriate to the union that a stay be granted of the order pending final disposition of the defendant's appeal.

I might point out that the strike against which this court has issued its injunction began, as the court well knows from our argument yesterday, on July 15, 1959. It continued for eighty-six full days before the President initiated on October 9, 1959, the procedure specified in the emergency provisions of the Taft-Hartley Act. A full seven days thereafter was allotted by the President to the Board of Inquiry appointed under the Act to report to him and an extension of three additional days was granted to the Board by the President.

This contrasts, if it please the court, quite vividly with the procedures followed by the President in other strikes, most notably in the longshore strike, where His Honor will remember by reading the newspapers a Board was set up, it met in one day, its findings were rushed to the President, and an injunction was entered I think the following day —

THE COURT: Mr. Goldberg, I know that your motion is for a stay pending appeal, and in anticipation on the motion you have presented, and which you indicated you would present, I have inquired as to whether or not Judge Staley of the Court of Appeals would be available, and I understand that he is available and ready to serve you in considering any motion you may care to make with reference to a stay.

It has occurred to this court that perhaps such a motion to the Court of Appeals, which now has jurisdiction as result of your

hing the motion, would be better heard by one of the members of that court than by this court. I understand that he is available. And I interrupt you now, because I feel that the arguments you are making might best be directed to Judge Staley of the Court of Appeals.

MR. GOLDBERG: I understand, and we had somewhat of a discussion about that this morning. I would, however, Your Honor, to perfect the record, like the record to show that I have made a motion to this court

THE COURT: I understand.

MR. GOLDBERG: for a stay pending appeal, for the circumstances that are described in this motion. And then I have an alternate motion to make, in the event Your Honor feels, as you have indicated, that you might want me to address my remarks to Judge Staley.

THE COURT: I feel as if you would not want to be repeating this, Mr. Goldberg. I am sure Judge Staley is immediately available.

MR. GOLDBERG: I would like to present this for the record. And I assume from Your Honor's remark the motion in this court for a stay pending the motion to appeal is denied.

THE COURT: It is denied.

MR. GOLDBERG: I have an order to that effect.

THE COURT: Does other counsel desire to be heard.

MR. GOLDBERG: I have another motion, may it please the court.

THE COURT: Mr. Goldberg.

MR. GOLDBERG: I now request, in keeping with Your Honor's remarks a moment or two ago, that a stay be granted for such time as is necessary for me to appear before Judge Staley and present a motion for a stay to the United States Circuit Court of Appeals. Your order has been signed, and I have left the time blank for Your Honor to insert. We are ready to proceed any time, and I am cognizant of the fact that Your Honor has entered an order.

THE COURT: I understand.

MR. GOLDBERG: And we want to comply with your order. And if is necessary, therefore, I be given some time to make my appearance before Judge Staley.

If Your Honor would advise me the disposition of that, so I can conform my record, I would appreciate it.

THE COURT: Do you desire to be heard, Mr. Doub?

MR. DOUB: My concern with this motion, as I understand it from the verbal statement which was just made today, I haven't had an opportunity to read it is this, Your Honor. I am con-

cerned by the implications of the granting of such a stay because of the established principles under which a stay may be granted and the inferences that might be drawn from its grant.

You recall that to obtain a stay after final decree in an injunction case the appellant must make an extraordinary showing, he must show a clear case, he must show that there is a doubtful legal question or a doubtful factual question, and if the court feels that there is a doubtful question involved he should grant a stay. But I submit, Your Honor, that there is no doubtful question here, there is no real legal question at all. And under Rule 52 a no court of appeals can review Your Honor's findings of fact unless they are clearly erroneous, and that means they are not supported by any evidence at all. And we know, however, that each one has been carefully checked and scrutinized this morning by counsel for all the parties. And I don't see how anyone could suggest that each of those findings of fact is not supported by material evidence.

Now, I know of no urgency so imperative and compelling in any case before this one as requiring the immediate effectiveness of the decree. And Your Honor has found that the continuance of this national strike, an industry-wide strike, will imperil the national health and safety.

Now, what this temporary stay, or what appears to be a reasonable period and a short period, means I don't know. Perhaps there is a federal judge who will hear this case, but he certainly is not going to hear it until the union is ready to present it to him. And when the union is going to present it to him I don't know.

My instructions are, if the court please, to oppose any application for a stay. And my concern even though you limited the period to a short one, that it would suggest some doubt on your part as to your findings, and I am sure there can be no doubt as to them.

And since this is my "swan song" here, if the court please, I would like to express my gratitude for your attention, courtesy and consideration, and more important than all that, the expeditious disposition of the matter.

THE COURT: It has been a real pleasure to work with counsel in this case, Mr. Doub.

Do I undestand, Mr. Goldberg, that the purpose of this petition is merely so that you are not in violation until you have an opportunity to present your motion for a further stay almost immediately? Is that correct?

MR. GOLDBERG: I was going to say that, Your Honor. I can answer my friend the Attorney General by saying this: The union is prepared to present its application for a stay to Judge Sto-

who we understand is here in Pittsburgh, available immediately. The union is prepared to argue its application for a stay immediately. The union waives all formal notices and other requirements and will submit its application for stay to Judge Staley upon formal motion papers and the arguments that we are now all familiar with.

And it seems to me it comes with ill grace from the Government of the United States to oppose this application for a stay. There was a time in a great dispute such as this, involving the steel industry, in 1952 when the Government of the United States appeared and appealed from an action of a district judge and obtained a stay—which later, by the way, was reversed by the Supreme Court of the United States. But there is equal justice in the land.

Your Honor has issued an order. The Steelworkers Union wants to comply with the order. We do not want to be in disobedience with the order. I know of no way to do that except the moment you enter an order, if I am not granted a stay, to direct the officials of the union to send a notice out as directed forthwith. And my purpose in asking for a stay is that we shall not be in disobedience of your order; so that in an orderly way we can make an appropriate appeal to the proper court for a stay of Your Honor's order.

THE COURT: Does counsel for the industry defendants desire to be heard?

MR. BANE: We have no comment at this time, Your Honor.

THE COURT: In view of the statement of counsel for the union, the court will grant a stay until 3:30 p.m. Judge Staley is immediately available and will preside in this court, Mr. Goldberg. He has asked us to make the facilities available to him.

There will be order in the court.

The District Court will now adjourn and the Court of Appeals will be here shortly.

CERTIFICATE

WE HEREBY CERTIFY that the foregoing pages contain a true and correct transcript of the proceedings had upon the hearing, held October 21, 1959, on Petition of the United States of America for Injunction, in the case of UNITED STATES OF AMERICA, Plaintiff, vs. UNITED STEELWORKERS OF AMERICA et al. Defendants, Civil Action No. 18242.

Ruby M. Palmer
Harriet Cole Thomas
Official Reporters

Pittsburgh, Pennsylvania
October 21, 1959

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having come on for hearing on the application of plaintiff, the United States of America, for an injunction, as prayed for in its verified petition, and the Court having considered all evidence submitted herein, the pleadings, memoranda of law, and argument of counsel, makes the following Findings of Fact and Conclusions of Law with respect to said application:

FINDINGS OF FACT

1. On October 9, 1959, the President of the United States, acting under the national emergency provisions of the Labor Management Relations Act, 1947, (61 Stat. 155, 29 U.S.C. 176) issued Executive Order 10843 (24 F.R. 8249) whereby he appointed a Board of Inquiry to inquire into the issues involved in labor disputes between employers in the steel industry which produce at least 85% of the steel production of the United States, and certain of their employees represented by the United Steelworkers of America (hereinafter sometimes referred to as the "Union"). In the Executive Order the President expressed the opinion that such disputes had resulted in a strike affecting a substantial part of the steel industry, an industry engaged in trade, commerce and transportation among the several states and with foreign nations and in the production of goods for commerce, and that the strike, if permitted to continue, would imperil the national health and safety. On October 14, 1959 the President issued Executive Order 10848 (24 F.R. 8401) extending to October 19, 1959 the date upon which the Board of Inquiry was to report to him.

2. The Board of Inquiry so convened by the President inquired into the issues involved in the disputes and rendered its written report to the President on October 19, 1959.

3. On October 19, 1959, after receipt of the report, the President directed the Attorney General, pursuant to the provisions of Section 208 of the Act (29 U.S.C. 178), to petition in the name of the United States any district court of the United States having jurisdiction of the parties to enjoin the continuance of such strike and for such other relief as might be necessary or appropriate. In his communication to the Attorney General, the President stated that in his opinion the unresolved labor dispute had resulted in a strike affecting a substantial part of an industry engaged in trade, commerce and transportation among the several States and with foreign nations and in the production of goods for commerce, which strike, if permitted to continue would imperil the national health and safety.

4. On October 20, 1959, the Attorney General filed a petition on behalf of the United States of America in this Court for an injunction against the defendants named in the petition.

5. Each of the defendants has by stipulation waived service of process and submitted to the jurisdiction of this Court and agreed that the case should be submitted to the Court for final hearing immediately upon the filing of the petition with evidence limited to affidavits and exhibits.

6. The defendants, except the Union, by stipulation waived their right to file any responsive pleading. The answer of the Union has been filed and the affidavits and exhibits of the parties received in evidence.

7. This suit was commenced under the national emergency provisions of the Act (Sections 200-210, 29 U.S.C., 176-180).

8. The strike by the defendant Union consisted of a concerted stoppage of work on the part of that defendant and did not constitute the exercise of the right of individual employees to quit their labor as set forth in Section 502 of the Act (29 U.S.C. 143).

9. The strike on the part of the Union resulted from unresolved labor disputes between defendant employers, who are engaged in one or more of the various stages of steel production, including the mining and transport of iron ore by railroad or vessel, the operation of blast furnaces for the conversion of iron ore into pig iron, the production of steel ingots, the rolling and shaping of steel ingots into various shapes and forms of steel products, and the fabricating of certain finished products, and certain of their employees represented by the Union.

10. The Board of Inquiry made an investigation of the issues and attempted to have the defendants resolve the dispute by free and collective bargaining. These efforts on the part of the Board of Inquiry were unsuccessful and the disputes remain unresolved.

11. The report of the Board of Inquiry concludes that "the parties have failed to reach an agreement and we see no prospects for an early cessation of the strike. The board cannot point to any single issue of any consequence whatsoever upon which the parties are in agreement." Unless the Court grants the injunction sought by the United States the strike will continue for an indeterminate period.

12. The strike affects a substantial part of the steel industry of the United States, which is engaged in trade, commerce and transportation among the several States and with foreign nations and in the production of goods for commerce.

13. The strike which commenced on July 15, 1959 and has continued until the present time, has resulted in the closing on July 15,

1959 of facilities producing at least 85% of the total steel production of the United States. Inventories of steel have dropped from 24,800,000 tons on July 15, 1959 to approximately 10,000,000 tons. This is below the normal inventory level and is below the level required to sustain continued production of industries and businesses dependent upon steel products. Approximately 500,000 striking members of the Union are now unemployed and more than 265,000 employees are idle in other industries by reason of the steel strike. The 765,000 unemployed support families numbering over 2,000,000 persons. If the strike were to continue, the total number of workers made idle by it would probably reach approximately 1,775,000 by the end of November and approximately 3,000,000 by the end of December. By that time more than 9,000,000 people would probably be affected by the strike.

14. On October 16, 1959 the Business and Defense Services Administration of the Department of Commerce issued an order requiring top priority to be given by steel producers to items required for use under the programs of the Department of Defense, including missiles, launching sites and nuclear vessels. This order applied immediately to steel producers which have not been shut down by the strike. It could not, however, meet the essential requirements of the Department of Defense because many of the special steel products it needs are not carried in inventory or produced by the plants still in operation.

15. The strike, which has now been in existence for more than 95 days, if permitted to continue, will imperil the national health and safety in the following respects:

(a) Certain items of steel required in top priority military missile programs of the United States are not made by any mill now operating, not available from any inventory or from imports. Any further delay in resumption of steel production would result in an irretrievable loss of time in the supply of weapons systems essential to the national defense plans of the United States and its allies.

(b) The planned program of space activities under the direction of the National Aeronautics and Space Administration has been delayed by the strike and will be further delayed if it is continued. Specifically, project MERCURY, the nation's manned satellite program, which has the highest national priority, has been delayed by reason of delay in construction of buildings essential to its operation. This program is important to the security of the nation. Other planned space programs will be delayed or threatened with delay by a continuation of the strike.

(c) Nuclear Submarines and the naval shipbuilding program other than submarines, including new construction, modernization,

and conversion, have been affected by reason of the inability to secure boilers, compressors, and other component parts requiring steel. Products of the steel industry are indispensable to the manufacture of such items and delay in their production will irreparably injure national defense and imperil the national safety.

(d) Exported steel products are vital to the support of United States bases overseas and for the use of NATO allies and similar collective security groups. The steel strike, if permitted to continue, will seriously impair these programs, thus imperiling the national safety.

(e) A continuation of the strike will have the ultimate effect of adversely affecting millions of small business enterprises, almost all of which are directly or indirectly dependent upon steel products and most of which lack the resources to stock large inventories. In addition, it will have the effect of idling millions of workers and a large proportion of the facilities in industries dependent upon steel for their continued operation. Manufacturing industries directly dependent on steel mill products account for the employment of approximately 6,000,000 workers and normal annual wages and salaries totalling approximately $34,000,000,000. The products of these industries are valued at over $125,000,000,000. The national health will be imperiled if the strike is permitted to continue.

16. Such results, if the strike is permitted to continue, will imperil the national health and safety and thereby cause irreparable damage and injury to the United States of America for which there is no adequate remedy at law.

CONCLUSIONS OF LAW

1. This action was properly instituted under the national emergencies provisions of the Labor Management Relations Act of 1947, Sections 206-210 (29 U.S.C. 176-180).

2. The statutory provisions of Sections 206 to 208 of the Act were in all respects fully and legally complied with, both prior to, and at the commencement of this suit by the United States of America.

3. The Court has jurisdiction of the subject matter of this suit and of the parties.

4. The work stoppage was a strike on the part of the United Steelworkers of America and did not constitute the exercise of the right of individual employees to quit their labor as set forth in Section 502 of the Act.

5. The strike is one affecting a substantial part of an industry engaged in trade, commerce and transportation among the several States and with foreign nations and engaged in the production of goods for commerce.

6. The strike, if permitted to continue, will imperil the national health and safety and thereby cause irreparable injury to the United States of America for which there is no adequate remedy at law.

7. Plaintiff, the United States of America, is entitled to the relief prayed for.

s/ Herbert P. Sorg
United States District Judge

Dated October 21, 1959

INJUNCTION

This cause having come on for hearing on the 20th day of October, 1959, upon a petition of the United States of America for an injunction pursuant to Section 208 of the Labor Management Relations Act of 1947 (29 U.S.C. 178), and the parties having stipulated by their respective counsel that (1) the defendants, and each of them, waive service of process and submit themselves to the jurisdiction of the Court, (2) the case be submitted to the Court for final hearing immediately upon the filing of the petition and (3) at such hearing all parties submit their evidence by way of affidavits and exhibits, without oral testimony, and, the Court having considered the evidence submitted herein by way of affidavits, the pleadings, memoranda of law and argument of counsel;

NOW, THEREFORE, it is this 21st day of October, 1959, by the United States District Court for the Western District of Pennsylvania, ordered:

1. That the defendants, and each of them; and their officers and agents, and all persons in active concert or participation with them, be and they are hereby enjoined and restrained (a) from in any manner continuing, encouraging, ordering, aiding, engaging or taking part in a strike or lockout in any of the operations of the employer defendants and their subsidiaries with respect to which the members of the defendant United Steelworkers of America are now on strike pertaining to the production of iron and ingot molds and the manufacture, rolling, drawing, forging, fabricating, storage and distribution of steel and steel products, including the mining and transport of iron ore and other component materials necessary for the production of iron and steel, and (b) from in any manner interfering with or affecting the orderly continuance of work therein.

2. That the members of the defendant United Steelworkers of America, acting in concert, be and they hereby are restrained and enjoined from in any manner continuing, encouraging, ordering, aiding, engaging in or taking part in any strike or lockout at the facilities or operations of the employer defendants and their subsidiaries described in the preceding paragraph hereof, or from in any manner interfering with, or affecting, the orderly continuance of work at such places, and from taking any action which would interfere with this Court's jurisdiction in the premises; provided, however, that nothing in this paragraph shall be construed to require an individual employee to render labor or service without his consent or to make the quitting of his labor or service by an individual employee an illegal act, nor shall the

quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this paragraph.

3. That the defendant, the United Steelworkers of America, its president and other appropriate officers, agents and employees, be and they are hereby directed: (a) to instruct, immediately, all its members (i) who are employees of the employer defendants and (ii) who are engaged in any of the operations described above to resume their normal employment forthwith; (b) to give notice forthwith to all its members of the terms of this Order by posting a copy of such Order at the headquarters of the United Steelworkers of America, at 1500 Commonwealth Building, Pittsburgh, Pennsylvania, and such posting will be deemed to constitute notice of this Order to all members of the United Steelworkers of America; and (c) to take all other appropriate action which may be necessary to insure that such directions are carried out.

4. That, during the period of this injunction unless and until new agreements are executed between the employer defendants and the United Steelworkers of America, the employees of the employer defendants represented by the United Steelworkers of America shall be employed under the terms and conditions of all agreements in effect on June 30, 1959 between the employer defendants and the United Steelworkers of America.

5. That, during the period of this injunction, the several defendants are directed to engage in free collective bargaining in good faith for the purpose of resolving their labor disputes and to make every effort to adjust and settle their differences.

6. This Order shall remain in full force and effect until the further order of this Court.

Issued October 21, 1959
2:45 p.m. o'clock (DST)

s Herbert P. Sorg
United States District Judge

NOTICE OF APPEAL

Notice is hereby given that the United Steelworkers of America, defendant herein, appeals to the United States Court of Appeals for the Third Circuit from the order of United States District Court for the Western District of Pennsylvania, dated Oct. 21, 1959, granting an injunction against said defendant and others, and from each and every part of said order.

/s/ Arthur J. Goldberg

Arthur J. Goldberg, Attorney for United Steelworkers of America

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DESIGNATION OF RECORD ON APPEAL

The United Steelworkers of America, Defendant herein, having filed its notice of appeal, hereby designates the complete record, and all the proceedings and evidence in the action, as the record on appeal.

/s/ Arthur J. Goldberg

Arthur J. Goldberg, Attorney for United Steelworkers of America

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MOTION FOR STAY PENDING APPEAL

Now comes the United Steelworkers of America, one of the defendants in the above-entitled matter, pursuant to Rule 62(c) of the Federal Rules of Civil Procedure, having appealed from this Court's Order herein dated October —, 1959, granting an injunction against the said defendant and others as therein specifically stated, and prays that said Order be stayed pending disposition of the defendant's appeal therefrom on the conditions hereinbelow set forth.

In support of this motion the defendant, United Steelworkers of America, shows to the Court as follows:

1. The Union specifically undertakes, as a condition of the stay requested, to docket its appeal in the Court of Appeals within 21 hours. It further undertakes to present its brief on appeal to the Court of Appeals within 21 hours thereafter and to waive any and all time limits in the Court of Appeals so that the appeal may be disposed of promptly on the merits. Under these circumstances

there is no reason to expect that the issues presented here cannot be disposed of in the Court of Appeals with reasonable promptness.

2. The strike against which this Court has issued its injunction began on July 15, 1959. It continued for 86 days before the President initiated, on October 9, 1959, the procedure specified in the emergency provisions of the Taft-Hartley Act. A full 7 days was thereafter allotted by the President for the Board of Inquiry appointed under the Act to report to him, and an extension of 3 additional days was granted to the Board by the President. The amount of time thus alloted to the Board of Inquiry contrasts vividly with the time consumed by the Board of Inquiry which was similarly constituted under the Act to deal with the recent strike in the Longshore Industry.

The defendant believes that there is no threat to the National health and safety which requires that an injunction be granted in this case. Although this Court has determined to the contrary the facts set forth above make it crystal clear that the threat to the National health and safety is not, even in the estimation of the Government, of such an immediate character as a require the Court to deny to the Union the right to have that determination reviewed by the Court of Appeals prior to the time the Union is compelled to terminate the strike.

3. If the stay requested herein is granted, the status quo will be preserved so that the Court of Appeals may pass upon the questions presented with the least prejudiced to the rights of the parties and to the public interest. Failure to grant the stay will require more than 500,000 workers to terminate a strike for which they have sacrificed so much and will require the employer defendants to begin immediately the costly process of re-opening their mills before the propriety of the order directing them so to do can be reviewed on appeal. Granting of the stay, even if this Court's order should be sustained by the Court of Appeals, will add only a very short time to the almost 100 days in which this strike continued before the Government moved to enjoin it.

4. The question of whether a stay of an injunctive order should or should not be granted is a question addressed to the discretion of the Court under Rule 62(c) of the Rules of Civil Procedure. For the reasons above stated it is submitted that a proper exercise of discretion and a fair balancing of the equities involved requires the granting of the stay requested.

Respectfully submitted,

s/ Arthur J. Goldberg

Arthur J. Goldberg, Attorney for
United Steelworkers of America

ORDER UPON DEFENDANT'S APPLICATION FOR A STAY

This cause came on to be heard upon the motion of the defendant, the United Steelworkers of America, for a stay pending appeal of the Court's order of October 21, 1959, granting an injunction as therein stated, and was argued by counsel. Upon consideration thereof it is hereby ordered, adjudged, and decreed that the said motion be and the same is hereby denied.

/s/ Herbert P. Sorg, Judge
United States District Court
for the Western District of
Pennsylvania

[Title omitted in printing]

ORDER UPON DEFENDANT'S MOTION
FOR A HOUR STAY

This cause came on to be heard upon the motion of the defendant United Steelworkers of America, for a stay of this Court's order of October 21, 1959 granting an injunction as therein stated, for 24 hours pending application to the Court of Appeals for the Third Circuit, or a judge thereof, for a further stay pending appeal, and was argued by counsel. Upon consideration thereof it is hereby ordered, adjudged, and decreed:

That this Court's order be stayed until 3:30 P.M., October 21, 1959, and if the defendant United Steelworkers of America has, by that time, filed with the Court of Appeals for the Third Circuit, or a judge thereof, an application for a further stay then until that Court, or the judge to whom application is made, acts upon such application.

/s/ Herbert P. Sorg

Herbert P. Sorg, Judge
United States District Court for the
Western District of Pennsylvania

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA,
Appellee

v.

UNITED STEELWORKERS OF AMERICA, et al.
Appellant

Docket No. 13[illegible]

APPLICATION FOR STAY PENDING APPEAL

This case arises as the result of a petition filed by the United States under the procedures specified in Sections 206-210 of the Labor Management Relations Act of 1947 to enjoin the strike in the basic steel industry, which began on July 15, 1959. This procedure was initiated by the President on October 9, 1959, some 86 days after the strike began. The Board of Inquiry appointed by the President was originally granted 7 days in which to submit its report and was, thereafter, granted an extension of 3 days. Pursuant to this extension, the Board of Inquiry submitted its report to the President on October 19, 1959. Thereafter, on October 20, 1959 the United States filed a petition in the United States District Court for the Western District of Pennsylvania for an injunction against the strike.

The matter was heard in the District Court, by stipulation of the parties, on final hearing. The matter came on for hearing before Judge Herbert P. Sorg of the Western District of Pennsylvania on October 20, 1959. Pursuant to stipulation, the parties submitted evidence by way of affidavit and exhibits and no oral testimony was submitted. After hearing argument and upon consideration of the evidence thus submitted, the District Court at 2:15 P.M. October 21, 1959, issued an injunction that directed the immediate resumption of operations in the basic steel industry.

The Union promptly filed its Notice of Appeal and a Motion for Stay Pending Appeal. The District Judge denied the Motion for Stay. Thereupon the Union moved for a stay in order to permit application to the Court of Appeals, or a justice thereof, for a stay pending appeal. This motion was granted until 5:00 P.M. on the 21st of October. In support of the present application for a stay pending appeal the appellant United Steelworkers of America states as follows:

4. There are, in our views, serious and substantial questions both of law and fact to be determined on this appeal. In the District Court the Union contested vigorously the Government's assertion that the statutory requirements for the issuance of an injunction against the steel strike were satisfied. In particular, the Union contended, and produced substantial evidence in support of its contention, that there was in fact no peril to the national health and safety as required by the provisions of the Taft-Hartley Act. As indicated in its memorandum to the trial court, which is annexed hereto, the Union showed that it was the intention of Congress only to permit an injunction against strikes in the case of direct and immediate danger to the health and safety of the nation, strictly defined. Congress deliberately chose not to permit injunctions against strikes because of their effect upon the national welfare or the national interest or the national economy and the standards set forth by Congress are not in fact satisfied in this case.

In addition, the Union urged that no injunction should be granted as a matter of discretion and, finally, that the statutory provisions granting the District Court's jurisdiction to issue injunctions in these cases were unconstitutional under Article III, Section 2 of the Constitution in that they purported to vest in the District Courts the performance of non judicial functions. All of these contentions were fully supported in the memorandums submitted by the Union and controverted by the Government.

For the reasons set forth we believe that there are substantial and difficult questions to be presented on the appeal of this case.

5. The Union recognizes that there is a grave public interest in this matter and that delay in the effective date of the District Court's injunction not justified on a proper balancing of the equities would be unconscionable. The Union therefore offered in the District Court, and now repeats its offer, to move with the utmost expedition in obtaining prompt adjudication of its appeal on the merits. The appeal has already been docketed in the Court of Appeals in Philadelphia. The record has been prepared. The Union is prepared to file its brief in the Court of Appeals within 48 hours or such shorter time as the Court may direct if the Court will permit such briefs to be filed in mimeographed form. The Union is prepared to waive any and all time limits and is prepared immediately to present its argument on the merits to the Court of Appeals.

6. Under these circumstances and in view of the serious nature of the question presented we believe that the granting of a stay pending disposition of the appeal is not only proper but necessary to properly protect the rights of the parties. In making this assertion we recognize that the interests of the public and of the Nation

must be balanced against the interests of the litigants here. But we submit, a fair consideration of the equities clearly indicates the propriety of granting the stay requested by the Union.

On the one hand, from the viewpoint of the public and the Nation, there is the fact that the District Court has found that the strike in the steel industry does create a threat to the National health and safety. The nature and immediacy of that threat, however, can properly be judged only in the context of the delays of almost a third of a year which the Government itself has permitted to occur before seeking an injunction. This is not a long-shore strike in which immediate action was required to prevent actual damage to the National health and safety. This is a situation in which the President himself delayed 86 days before even initiating the Taft-Hartley procedure and granted the Board of Inquiry a full 10 days thereafter to report to him as to the issues. These actions themselves make it clear that a delay of a few more days, indeed even of a few more weeks, would not irreparably harm the national interests. The Government itself having proceeded at a leisurely pace surely cannot be heard to say that the rights of the union must be summarily denied, without any possibility of review because of the necessity for haste.

On the other side of the coin, we have the situation which faces the Union, and the industry too, if a stay pending appeal is denied. The injunction granted herein is a temporary injunction in fact although a final injunction in name. It must, under the statute, be dismissed in 80 days. Congress specifically provided that such an injunction should be appealed. Such an appeal can have no meaning, however, if, while it is pending, the injunction has expended its full force.

If the District Court's order should not be stayed and the injunction reversed there will be tremendous damage not only to the Union but also to the Employers. As to the Union, its strike in which 500,000 individual Steelworkers have sacrificed their wages for a period of more than 3 months will be broken. As to the Companies, they will have undertaken the tremendously expensive task of reopening their mills and starting their furnaces, only to have to shut them down again if the injunction is reversed. Balancing, therefore, the injury to the plaintiff which will be suffered if the stay is granted and the decision below affirmed against the damage which will be suffered to the other parties if the stay is denied and the injunction is reversed, we think it clear that under the conditions under which we ask for this stay it should be granted.

I. The Congress of the United States did not mean to entrust to a single District Judge unreviewable rights to require free men to work or free industry to operate. The Congress of the United

States provided definite standards and required a jurisdictional finding as to the existence of an immediate danger to the National health and safety before any such injunction should be issued. The Congress of the United States provided for appellate review of such injunctive orders. All of these provisions become meaningless if the Union here is not given an opportunity to present its contentions on appeal before the injunctive order becomes effective. If this appeal is handled in the ordinary course, the injunction provided under the Act will have long been dismissed before the appeal can be heard. There will in fact be no judicial review. We most seriously urge that such was not the contemplation of Congress and that, in providing for judicial review, Congress must have anticipated and indeed intended that substance be given to the right of appeal for which it provides. Such substance can be given to that right only if the defendant Union's application for a stay is granted.

Respectfully submitted,
Arthur J. Goldberg
Arthur J. Goldberg, Attorney for
United Steelworkers of America

[Caption and cover omitted in printing]

Hearing on Application for Stay
Pending Appeal
Held at Pittsburgh, Pennsylvania
Wednesday, October 21, 1959
BEFORE: Honorable Austin L. Staley, Judge.

COUNSEL PRESENT

George Cochran Doub, Esq., Hubert Teitelbaum, Esq., Donald MacGuinness, Esq., and Harland F. Leathers, Esq., appearing on behalf of the Government;

Arthur J. Goldberg, Esq., David E. Feller, Esq., Elliot Bredhoff, Esq., and Jerry D. Anker, Esq., appearing on behalf of United Steelworkers of America;

John C. Bane, Jr., Esq., appearing on behalf of iron and steel producing companies;

Nicholas Unkovic, Esq., appearing on behalf of Pittsburgh Steel Company;

John G. Wayman, Esq., appearing on behalf of Crucible Steel Company;

William Kelly Montague, Esq., appearing on behalf of a number of independent ore companies.

THE COURT: Mr. Wilner.

MR. WILNER: I would like to present to the court Mr. Arthur J. Goldberg, general counsel of the United Steelworkers of America, a member of the court admitted to the Bar in the State of Illinois, in the District of Columbia and a member of the Supreme Court of the United States; and I move his admission especially for these proceedings.

THE COURT: Of course, Mr. Wilner, this doesn't constitute a court; it is merely a judge of the Court of Appeals, so it is not necessary to admit him to court. I will be happy to hear him.

MR. WILNER: All right.

Mr. Goldberg.

THE COURT: You may proceed, Mr. Goldberg.

I might inform you that I have had occasion to read the injunction and also your motion which was presented to Judge Sorg for a stay.

Now I understand that you have filed a notice of appeal with the Clerk. Is that so?

MR. GOLDBERG: That is correct, and we have docketed the appeal in Philadelphia, and the case is now lodged in your court as Docket Number 13059.

THE COURT: And have you prepared a written motion?

MR. GOLDBERG: I have prepared a written application for stay pending appeal, which I should now like to tender to the court, apologizing for the fact that I had to make some changes because of the order that was entered a few minutes ago.

THE COURT: That is all right. You may proceed, Mr. Goldberg.

MR. GOLDBERG: May it please the court, the court has already read the order entered by the district judge and is in a summary way advised of the nature of this controversy.

This is a grave case, of great national importance, arising as a result of a petition filed by the United States under the procedures specified in the Labor Management Relations Act to enjoin the strike in the basic steel industry which began on July 15.

I should point out to the court, because it has relevancy to the question of this application for a stay pending appeal, that the procedure was initiated by the President of the United States under the so-called national emergency provisions of the Taft-Hartley Act on October 9, 1959, some eighty-six days after the strike began.

The Board of Inquiry appointed by the President was given seven days initially in which to conduct its hearings and to submit its report, and on the request of the Board, this time was extended by the President for three days, and pursuant to this extension, the Board of Inquiry submitted its report to the President on October 19, 1959, and it was the following day that a petition was filed in the District Court for an injunction against the strike.

I recite this fact because I want to point out to the court that unlike procedures followed in most if not all of the other national emergency cases, this case has taken a different course. The strike has been allowed to go on, and the procedures not invoked for now a hundred days, and even when the procedures were invoked they were invoked in a manner which afforded to the parties involved, and to the steel union before the Board of Inquiry and to the companies, an opportunity to present their contentions in somewhat a detailed way to the Board.

The President himself recognized that the character of this dispute was somewhat of a different character because he took some time in order to evaluate the results of the Board of Inquiry.

Now in our view, there are serious and substantial questions of law to be determined on this appeal. In substance in the district court, the Union vigorously contested the government's assertion that the statutory requirements for the issuance of an injunction against the steel strike were satisfied, and I might say to your Honor that to my knowledge this is the first time where this contention: a challenge on the statutory requirements being fulfilled has been made to a court of appeals or to a higher court. In fact, I don't recall in the history of national emergency litigation that the question we are litigating, which I shall describe in a moment, has been adjudicated or has even been presented.

Most of the national emergency injunctions that have been entered have been entered pursuant to pro forma proceedings. Most of them are proceedings in which the Union itself has not contested the substantial allegations or averments of the government.

This is no pro forma proceeding as far as the United Steelworkers of America is concerned. We are challenging the government's assertion as a matter of law, and as a matter of fact. It is a serious matter when a strike involving 540,000 people is to be terminated by an order of a court. Judge Sorg regarded it to be a serious matter in his study and application to the issues of the case, and while I am in disagreement with the result, nevertheless I must say that he did not regard it to be a case where he would issue an injunction pro forma.

The Union recognizes the problems involved on an application of a stay, and it recognizes its own responsibilities in this area. It is

not our desire to ask for a stay and submit the case to the normal procedures of a court of appeals. It is our proposal that if your Honor sees fit to grant this stay, that we will move with the utmost expedition to obtaining prompt adjudication of the appeal in this case.

As I explained to you, the appeal has already been docketed in the Court of Appeals in Philadelphia. Judge Sorg was kind enough to sign an order a few minutes ago directing the clerk forthwith to prepare the record in this case. If the record is received, and we believe it will be received by the same day, or tomorrow at the latest, we are prepared, with the permission of the court of Appeals, to file an appropriate brief in typewritten form if the court will permit us, because of lack of time to print, within forty-eight hours; and we are prepared to waive any and all time limits.

THE COURT: What is the size of the record?

MR. GOLDBERG: The size of the record, the record consists of the pleadings in the case, affidavits filed by the respective parties. It is not too voluminous.

THE COURT: Any testimony?

MR. GOLDBERG: The case was heard on the affidavits; no oral testimony was taken. This was done pursuant to a stipulation between the government, ourselves, and other defendants, so it is not a large record.

THE COURT: Is there any question of jurisdiction raised, or venue?

MR. GOLDBERG: We are not raising any question of jurisdiction of the parties. We are raising a question as to whether the substantive jurisdictional requirements of the Taft-Hartley Act have been met.

THE COURT: No question of venue?

MR. GOLDBERG: No question of venue. All such questions were waived in the interests of proceeding expeditiously before the lower court.

THE COURT: By all defendants?

MR. GOLDBERG: Yes.

Now we are prepared, as I have indicated, to proceed immediately to the Court of Appeals whenever your Honor would indicate to us, or the clerk of that court would indicate that the Court of Appeals is ready to hear us, and we urge in fact that there be a prompt determination of this case, for this reason among others, that we stipulated with the government that the matter should be heard on the final order in the case, not on a temporary restraining order as has been the normal practice.

I might explain to your Honor why that was so, and why it was regarded to be desirable on our part, because that has pertinency on the question of a stay.

The steel industry is unlike any other industry in the United States. It is unlike any other industry in the United States in the sense that it creates incalculable damage to open the industry, have it going for a while, and then shut it down again. Now this is a problem for the steel companies, but it is a problem for the Union too. Even though we are on strike against the industry, we feel we are a part of that industry, but it is also of incalculable damage to the Union to have a strike, a nation-wide strike such as this strike is, and then to have the strike terminated and then, if our contentions are accepted by a Court of Appeals, have the strike resumed again after a period of time.

THE COURT: What are you asking for now?

MR. GOLDBERG: I'm asking for your Honor to stay the order of the district judge, for a sufficient length of time to permit us expeditiously to appear before the full bench, a panel of the Court of Appeals, and to present our case to the Court of Appeals.

THE COURT: You may present the appeal.

MR. GOLDBERG: The application for a further stay and the appeal.

THE COURT: Now, when would you be ready to proceed with an application for a further stay before the Court of Appeals?

MR. GOLDBERG: Any time that the Court of Appeals could hear me.

THE COURT: Even if it were tomorrow morning?

MR. GOLDBERG: Even if it were tomorrow morning, I am prepared to proceed any time that the Court of Appeals will hear me.

THE COURT: Do you have anything further?

MR. GOLDBERG: I merely want to say that I do not think it appropriate to argue the merits of the case at this time. I think it is apparent that substantial issues are involved. I think this is the pertinent consideration on an application for a stay, plus the great danger that could be involved both to the industry and the Union, and to contrast this against the fact that there can be no damage to the government or people of the United States in a short delay sufficient to present important legal considerations to an appropriate court.

(Note: Change of reporters.)

THE COURT: Is there anyone here representing the companies?

MR. BANE: Your Honor, I represent the steel companies and

Mr. William Montague represents the iron ore mines, the independent mines.

THE COURT: May I hear from you, Mr. Bane?

MR. BANE: Yes, indeed, your Honor.

We shall be glad to be in Philadelphia tomorrow morning, if it is desirable.

THE COURT: Do you represent all of the steel companies?

MR. BANE: All of the steel companies in this case.

THE COURT: Do you have any objection to a stay pending application for a further stay to the full Court of Appeals or to a panel of the Court of Appeals?

MR. BANE: I would say this: We are very anxious to have this case behind us one way or the other. It is quite true, as Mr. Goldberg said, that it is impossible to open the steel mills for a short time and then to close them without doing a great deal of money damage and hurting everybody concerned. We are very anxious to get the case behind us and whatever is the best way to do that is what we want to do.

We will be available at any time in Philadelphia or wherever it is.

THE COURT: Mr. Unkovic, do you wish to be heard, representing anyone?

MR. UNKOVIC: I am with Mr. Bane, thank you.

MR. DOUB: If your Honor please, the government is compelled to oppose this application.

THE COURT: You are Mr. Doub?

MR. DOUB: Yes.

If your Honor please, what are the doubtful issues requiring submission to the Court of Appeals of the Third Circuit? You will recall that there must be an extraordinary showing for a stay granted pending appeal where there may be irreparable injury to the interests of the United States. And we say those interests are more compelling in this case than any that has ever occurred before.

They are making two points on appeal, your Honor, and only two.

One, my friend Mr. Goldberg argues that these national emergency provisions of the National Labor Relations Act of 1947 are unconstitutional, although they have been in effect for fourteen years, although they have been invoked and applied fourteen times, although every District Judge expressly or implicitly held they were constitutional, including Judge Weinfeld, Judge Irving Kaufman, Judge Medina, Judge Harris.

Mr. Goldberg made every contention on his claim of unconstitutionality before Judge Knight in a case involving the United

Steelworkers of America. Judge Knight wrote a careful opinion, overruling that contention. They appealed to the Court of Appeals for the Second Circuit and in an opinion by Circuit Judge Chase, concurred in by Circuit Judge Augustus Hand and a third judge, these arguments were carefully considered, carefully evaluated, and rejected.

THE COURT: Was that taken to the Supreme Court?

MR. DOUB: It was not, and they did not see fit to apply for certiorari. That was, if your Honor please, in 1952, I think.

Now, what is their other point? It is that the findings of fact upon which the conclusory findings of the District Court here today are based are in error. And of course under Rule 52 they must show they were clearly erroneous for the Court of Appeals to review them. They must show that each of these meticulous findings of fact that the District Judge carefully checked over with us for two hours this morning, hearing the comments of counsel on both sides, asking us to have references and to check the exact precise statements in the affidavits of the high government officials who testified here by affidavit, pursuant to stipulation.

If the court please, certainly if there is anything we accept under our appellate procedure as elementary it is that findings of fact of a District Court, supported by evidence, are conclusive.

I do not know whether your Honor has seen the findings of fact that were made, but I submit that if you examine them you will find that there is just nothing there on which an appellate court could take exception, could say Finding X or Finding Y is not support by evidence. It just can't be, if the court please.

THE COURT: Of course it may well be, however, that the ultimate findings are wrong.

MR. DOUB: Let me just remind the court, without arguing it, just what some of these findings are based on.

First, that the government's transcontinental or intercontinental missile programs, the Titan and the Atlas, have been prejudiced by the inability to obtain special steel items, that they have been delayed in the past and there will be material delays in the future. And the Secretary of Defense, Mr. Gates, has said that those programs are of the highest government priority and essential to the defense of our country.

In addition to that, Mr. Gates stated that the Polaris missile program under which these missiles are activated by nuclear submarines has also been prejudiced and a continuance of the strike will have serious effects upon them in the same way.

Then the head of the National Aeronautic and Space Administration has stated that Project Mercury, the nation's manned satellite program, and the development of high powered thrust rocket

engines for the launching of our space missiles, which we are told by the press have lagged so behind those of an unfriendly power have been prejudiced and that these programs are of the highest priority.

In addition, he has found nuclear submarines and the naval shipbuilding program other than submarines, including new construction, modernization and conversion, have been affected by reason of the inability to secure boilers, compressors and other component parts requiring steel.

Products of the steel industry are indispensable to the manufacture of such items and delay in their production will irreparably injury national defense and imperil the national safety.

Another finding, your Honor: "Exported steel products are vital to the support of the United States bases overseas and for the use of NATO allies and similar collective security groups. The steel strike, if permitted to continue, will seriously impair these programs, thus imperiling the national safety."

The court also found that we had, when the strike began, over three months ago, 21,800,000 ingot tons of steel. We are now down to 10,000,000 tons. It is being consumed at the high rate of 5,000,000 tons a month.

But an over-all figure of that kind does not take into consideration that this inventory is completely unbalanced. There are a multiplicity of special items and types and forms of steel and there is a shortage of those items, as indicated by the continuing shutdown every day of more businesses.

Wendell Barnes, head of the Small Business Administration, in his statement pointed out the multiplicity of small businesses in the United States dependent upon steel products and how vulnerable they are to this strike because they didn't have the financial resources to stock up on steels in anticipation of the strike as some industries were able to do, and that these small businesses are in a crucial, critical condition.

Now if your Honor please, in addition to that, the expert economists on both sides disagree as to the effects of the strike on the national economy. About the only thing the union came in with were the statements of Mr. Keyserling and Mr. Nathan. And what did they say? Well, Mr. Keyserling said the effects of this steel strike were not any worse than the depression or recession of 1958.

And what did Mr. Nathan say? He said he didn't think that a continuance of this strike would imperil the national health and safety. And how did he attempt to demonstrate that? By comparing the conditions today with the conditions during the war and pointing out what we were able to do under a wartime economy with

we were able to suspend the production of automobiles, suspend the production of most consumer goods, and convert a peacetime economy into a wartime economy with price controls, price allocations, government preemptions.

Of course, your Honor, there was no unemployment during the war, because the demands for production of the United States Government for defense purposes far exceeded our capacity.

So, if your Honor please, we say that the factual conclusion of the District Court that this strike of national scope, industry wide, shutting down 310 steel plants from the East Coast to the Pacific, from Canada down to the Gulf, shutting down over a hundred iron ore mines and eleven transport facilities, his finding that the continuance of the strike will jeopardize our national health and safety was clearly right.

It is the same finding the President of the United States made. He made it when he appointed the board of inquiry in his executive order, and he expressed the same opinion when he directed the Attorney General to bring this suit.

As Mr. Justice Jackson said in his concurring opinion in the *Youngstown Sheet and Tube* case, if the President of the United States seized the entire steel industry under statute, there would be the strongest presumption of validity for his action.

Now here the President didn't seize the steel industry. He merely made a finding required by the Statute to enable a temporary suspension of this strike, which I believe history will record, in spite of what my good friend Mr. Goldberg has told you—I believe history will record, when these hearths are reopened and 130,000 men go back to work, that this strike will be settled within the eighty days and that it was a constructive thing which has been accomplished.

THE COURT: Is there any other party that wishes to be heard?

If not, I will recess until four o'clock, at which time I will announce my decision.

(A recess was taken at this time.)

THE COURT: Upon consideration of the motion of the United Steelworkers of America, defendants, for a stay, presented to me today, and upon further consideration of oral argument in open court by all parties in interest, and in order to preserve the status quo while the movants have an opportunity to present fully to the United States Court of Appeals for the Third Circuit their contention that there is a substantial question of law involved, a stay is hereby granted of the order entered by the United States District Court for the Western District of Pennsylvania

dated this day, granting an injunction, provided, however, if no application for a further stay pending appeal is made to the United States Court of Appeals for the Third Circuit promptly upon the convening of its session at ten A. M. Eastern Daylight Saving Time, Thursday, October 22, 1959, this stay shall immediately expire. If, however, application be so made, this stay shall continue until the Court of Appeals acts thereon.

I may add that I have been in communication with Chief Judge Biggs and he will have a panel of the court in session at ten o'clock tomorrow morning, to hear your application for a further stay, and at that time you may present to the court an application for advancement of the hearing of the appeal. I am sure that it will be heard promptly.

I have copies of this order for the attorneys.

CERTIFICATE

WE HEREBY CERTIFY that the foregoing pages contain a true and correct transcript of proceedings had upon hearing on application for stay pending appeal in the matter of UNITED STATES OF AMERICA vs. UNITED STEELWORKERS OF AMERICA, et al., Docket No. 13056, at Pittsburgh, Pennsylvania, Wednesday, October 21, 1959, before Honorable Austin L. Staley, Judge of the Circuit Court of Appeals for the Third Circuit.

Ruby M. Palmer

Helen E. Smith

Official Reporters,
United States District Court.

Pittsburgh, Pa.,
October 21, 1959.

ORDER OF COURT

AND NOW, to-wit, this 21st day of October, 1959, upon consideration of the motion of the United Steelworkers of America, defendants, for a stay presented to me this day, and upon further consideration of oral argument in open court by all parties in interest, and in order to preserve the status quo while the movants have an opportunity to present fully to the United States Court of

Appeals for the Third Circuit their contention that there is a substantial question of law involved. A STAY IS HEREBY GRANTED of the order entered by the United States District Court for the Western District of Pennsylvania, dated this day, granting an injunction; provided, however, if no application for a further stay pending appeal is made to the United States Court of Appeals for the Third Circuit promptly upon the convening of its session at 10 a.m., E.D.S.T., Thursday, October 22, 1959, this stay shall immediately expire; if, however, application be so made, this stay shall continue until the Court of Appeals acts thereon.

Staley

Circuit Judge

[Title omitted in printing]

APPLICATION FOR FURTHER STAY PENDING APPEAL

This case arises as the result of a petition filed by the United States under the procedures specified in Sections 206-210 of the Labor Management Relations Act of 1947 to enjoin the strike in the basic steel industry, which began on July 15, 1959. This procedure was initiated by the President on October 9, 1959, some 86 days after the strike began. The Board of Inquiry appointed by the President was originally granted 7 days in which to submit its report and was, thereafter, granted an extension of 3 days. Pursuant to this extension, the Board of Inquiry submitted its report to the President on October 19, 1959. Thereafter, on October 20, 1959, the United States filed a petition in the United States District Court for the Western District of Pennsylvania for an injunction against the strike.

The matter was heard in the District Court, by stipulation of all parties, on final hearing. The matter came on for hearing before Judge Herbert P. Sorg of the District Court for the Western District of Pennsylvania on October 20, 1959. Pursuant to stipulation, the parties submitted evidence by way of affidavit and exhibits and no oral testimony was submitted. After hearing argument and upon consideration of the evidence thus submitted, the District Court at 2:15 p.m., October 24, 1959, issued an injunction that directed the immediate resumption of operations in the basic steel industry.

The Union promptly filed its Notice of Appeal and a Motion for Stay Pending Appeal. The District Judge denied the Motion for Stay. Thereupon the Union moved for a stay in order to permit application to the Court of Appeals, or a justice thereof for a stay

pending appeal. This motion was granted until 8:30 p.m. on the 21st of October. Application for a stay pending appeal was presented to Circuit Judge Austin L. Staley, sitting in the Federal Court House in Pittsburgh, Pa., at approximately 3:15 p.m. on October 21, 1959. Judge Staley granted a stay to provide defendant Union an opportunity to present fully to this Court its contention that there is a substantial question of law involved, subject to expiration if no application for a further stay pending appeal to this Court is made upon the convening of its session at 10 a.m., E.D.S.T. Thursday, October 22, 1959. Judge Staley's Order also provides that if such application is made, the stay shall continue until this Court acts thereon.

In support of the present application for further stay pending appeal the appellant United Steelworkers of America states as follows:

1. (a) There are, in our view, serious and substantial questions both of law and fact to be determined on this appeal. In the District Court the Union contested vigorously the Government's assertion that the statutory requirements for the issuance of an injunction against the steel strike were satisfied. In particular, the Union contended, and produced substantial evidence in support of its contention, that there was in fact no peril to the national health and safety as required by the provisions of the Taft-Hartley Act. As indicated in its memorandum to the trial court, which is annexed hereto, the Union showed that it was the intention of Congress only to permit an injunction against strikes in the case of direct and immediate danger to the health and safety of the nation, strictly defined. Congress deliberately chose not to permit injunctions against strikes because of their effect upon the national welfare or the national interest or the national economy and these standards set forth by Congress are not in fact satisfied in this case.

In addition, the Union urged that no injunction should be granted as a matter of discretion. The Union based this on the ground that the public interest would best be served and a settlement of the strike be expeditiously reached by denial of the injunction, reliance on which had influenced the failure of the employer defendants to reach a fair and equitable settlement with the Union.

Finally, the Union urged that the statutory provisions granting the District Court's jurisdiction to issue injunctions in these cases were unconstitutional under Article III, Section 2 of the Constitution in that they purported to vest in the District Courts the performance of non-judicial functions. All of these contentions were fully supported in the memorandum submitted by the Union

(b) The Government will undoubtedly urge that in view of the findings of the District Court and the provisions of Rule 52(a) of the Rules of Civil Procedure there can be no substantial question to be determined on this appeal. Such an argument, of course, does not reach the contentions of law made by the defendant Union. An examination of the briefs submitted to the Court of Appeals, we believe, will demonstrate instantly that there are substantial and serious legal questions presented on this appeal. Beyond this, however, we think we must meet forthrightly the contention of the Government that the findings of the District Court make its conclusions as to the existence of a peril to the national health and safety substantially immune to review here.

The first point to be noted is that this case was heard solely on affidavits. There was no oral testimony. There was no question as to the credibility of the witnesses. The question before this Court is the same as the question before the trial court: whether, in the light of the affidavits submitted by the parties, it was sufficiently established that the steel strike creates a peril to the national health or safety.

The findings of the District Court do not materially affect the resolution of this question. In relevant part, they merely quote the affidavits which were submitted by the plaintiff. They wholly ignore the affidavits submitted by the defendant. As is plain from their face, they do not represent the result of any consideration by the trial court of the substance of the plaintiff's affidavits or of the question of whether, on consideration of the specific facts shown by those affidavits (which are largely non-existent) and the facts shown by the defendants' affidavits, a case was proved by the plaintiff.

We turn then to the affidavits. The first point to be made with respect to those affidavits, and to the findings of the District Court based upon them, is that it is plainly not sufficient simply to submit an affidavit from the Secretary of Defense or some other Government official stating that the steel strike creates a peril to the national health and safety. The burden of the plaintiff to supply testimony which will support that conclusion is not met simply by submitting an affidavit stating the conclusion. Nor, certainly, are findings which merely copy the conclusions set forth in affidavits entitled to the presumption of correctness embodied in Rule 52(a). Equally, we submit, a finding of fact which merely parrots the statement of a government official that the steel strike has delayed the defense effort, without specification of the precise nature of the delay or explanation as to why existing stocks and present production in unstruck mills cannot meet the defense need, is not entitled to the benefit of Rule 52(a). The findings, and the

affidavits submitted by the Government which they copy, must be judged, rather, on the basis of the specific facts shown by the Government and the question to be determined on appeal is whether those specific facts support the general conclusions upon which the trial court after due consideration in the light of other facts proven by the testimony, reached his decision on the ultimate question to be determined.

The second point to be noted is that this case was heard on final hearing. Under such circumstances, unlike the situation in a hearing on preliminary injunction, the plaintiff had the burden of establishing by the clear preponderance of the evidence the facts essential to the relief which it requested. It was not the burden of the defendant Union to show that there is no peril to the national health and safety. It was the burden of the plaintiff to show that there is.

It must be remembered, finally, that in order to expedite a hearing of this case and to avoid any unnecessary delays, the case was heard solely upon affidavits. The affidavits relied on by the Court to the total exclusion of the affidavits by the defendant Union can be assumed to have been carefully constructed so as to state the most that can be stated in support of the Government's position. They were executed after the Union had publicly stated that it would contest the issue of health and safety, and after the Union had made available to the government, through the Board of Inquiry, the proof which it proposed to submit in support of its contention. Under these circumstances, the affidavits must, we believe, be construed strictly against the Government. Where ambiguous language is used, and there is a failure to specifically state what the Government obviously desired to have stated for the purpose of this law suit, it must be assumed that the absence of such a statement occurs only because the statement required by the Government could not be made.

With these preliminary remarks we turn to a brief examination of some of the findings of fact in this case and the affidavits upon which they are based.

Finding 11 states that unless the court grants the injunction sought by the United States "the strike will continue for an indeterminate period." This finding is based on no evidence and is clearly erroneous. The only evidence received by the District Court relating to the probable length of the strike if no injunction is issued was contained in the affidavit submitted by David J. McDonald which specifically stated that the major stumbling block to the settlement of the dispute was the anticipation by the companies that an injunction would be issued and, further stated that

if no injunction should issue a settlement would be effected within a short period of time.

Finding 13, unlike most of the remaining findings, is specific and is based upon specific affidavits. The only relevant finding as to the effect of the strike upon the national health and safety of the steel strike, however, is the finding that more than 265,000 employees other than strikers are unemployed by reason of the steel strike. The findings as to the number who would be made idle by the strike by the end of November and the end of December are plainly irrelevant to the question before the Court in the light of the uncontroverted evidence that the strike would be settled before that time if no injunction were issued. And the 265,000 figure contained in the affidavit should be contrasted with the fact, shown by the defendant but not reflected in the finding, that even with the unemployment created incidentally by the strike, total unemployment is in fact decreasing and is today a full 2,000,000 below the unemployment existing in 1958.

Finding No. 14 is largely a quotation from Page 9 of the Mueller affidavit, dated October 16, 1959 (the same date as the priority order referred to). Obviously that affidavit could not, nor could the finding based upon it, contain any statement as to the effect of the priority order issued on October 16. The statement that this Order could not meet the essential requirements of the Department of Defense because of the "special steel products" needed by the Department is apparently based upon the affidavit of the Acting Secretary of Defense, which is also dated October 16, and therefore plainly cannot support the finding. Insofar as the finding attempts to find that there is no method by which such steels can be made available under the powers vested in the Business and Defense Services Administration, it is wholly erroneous and completely contrary to the affidavits in that it fails to state that the Business and Defense Services Administration has not taken steps, authorized by the Defense Production Act, to prohibit shipments of essentials types of steel against non-essential orders, similar to those taken in the 1956 strike (Memorandum for Defendant, pp. 23-24, citing 21 Fed. Reg. 5181) or to requisition existing stocks of such steel.

The most critical Finding is Finding 15. In discussing this paragraph it is important to make certain preliminary observations. First, most of the sub-findings in Finding 15 are direct quotations from affidavits which simply state conclusions without specifications. Thus, Paragraph (d) is an almost literal quotation from the Mueller affidavit, page 4. The difficulty with it is that the Mueller affidavit states no facts with respect to export steel products, gives no specification as to what products are vital to the support of

bases overseas or for NATO Allies and indeed supplies no evidentiary basis upon which a finding to that effect can properly be based.

Similar comments apply to the other paragraphs. Paragraph (a) is based on the Gates affidavit. The Gates affidavit does contain general statements of the kind contained in the finding. Examination of the specific evidence contained in the Gates affidavit, however, shows beyond doubt that it is an artfully constructed statement which carefully avoids offering specific evidence that that demonstrates the conclusions, despite the obvious desirability from the Government's point of view, of offering such evidence.

It is worthwhile, therefore, to examine the Gates affidavit in some detail. Three missile programs are mentioned in the Government affidavit: The POLARIS, the ATLAS and the TITAN.

In connection with the Polaris, the affidavit refers only to the "facilities" which are required to make them operational. It does not say what these facilities are. They may be office buildings or similar construction projects. The affidavit carefully does not state that it is talking about the steel necessary for the Polaris missile. What does the affidavit say as to the unspecified "facilities"? It says that a significant portion of steel "specified in the procurement contracts" is of a composition not common to commercial usage and not available from existing civilian inventories. It does not say what kind of steel that is. Most importantly, it carefully does *not* say that the steel specified in the procurement contract is essential to the construction of the facilities. The affidavit, indeed, goes out of its way to use the words "steel specified in the procurement contracts" instead of "necessary steel". Whether the particular kind of steel specified in the procurement contract is essential to the construction of the facilities is unstated. And only as to that steel, it may be noted, is the broad statement of unavailability from civilian inventories made.

The careful avoidance of a specific statement that the steel strike has caused a delay in particular items necessary for the national defense is again illustrated in the discussion of the ATLAS missile. It is there said that there is a delay in the delivery of steel required for that missile. It is not stated that this delay was caused by the steel strike or that the steel necessary for the ATLAS cannot be made available from existing stocks or by the exercise of allocation powers. Nor is it said that the steel mills now operating do not produce the specially processed stainless steel required for the ATLAS.

Similar comments apply to the other sub-paragraphs of Paragraph 15. Paragraph (b) is based upon the Dryden affidavit. As in the case of the Gates affidavit there is no statement in the Dryden

affidavit as to the kind of steel alleged to be lacking, the kind of delays created by the strike or even that the delays specifically mentioned—i.e. the delays in construction of buildings—arose because of the steel strike. Reference to "other planned space programs" in the affidavits and in the finding which quotes the affidavit will not serve as a substitute for specific testimony.

Paragraph (c) of Finding 15 constitutes another illustration of the loose use of language and the employment of the non-sequitur characteristic of both the affidavits and the findings. The first sentence in paragraph (c) finds that certain types of naval construction have been affected because of the inability to secure boilers, compressors and other parts requiring steel. Products of the steel industry, it is found, are indispensable to the manufacturer of such items. This finding, which is based largely upon the Gates affidavit, is remarkable in that *every statement in it could be true if there were no steel strike*. It may very well be that there is an inability to secure boilers, compressors, etc. It is undoubtedly true that steel is necessary to make boilers, compressors, etc. But it is not stated in the affidavits, or in the finding, whether the delay in obtaining boilers, compressors, etc. was caused by a shortage of steel or by some other factor, such as the strike now in progress in the compressor industry, or some other unrevealed factor. The statement therefore, that delay in the production of boilers, compressors, etc. will imperil the national safety is therefore wholly unrelated to the issues in this case.

Paragraph (e) of Finding 15 is concerned with the "ultimate" effect of the strike. That is, of course, irrelevant. What is relevant is the present effect and the immediately forseeable effect. The difference between the two is plainly illustrated by the finding in paragraph (e) which speaks of 6 million workers being idled by the strike and the finding in Finding 13 that 265,000 workers have been made idle by reason of the steel strike. The concluding sentence in Paragraph (e) that "the national health will be imperilled if the strike is permitted to continue" is totally unsupported by any affidavits and is wholly unrelated to the preceding statements in that finding.

Finding 16, finally, is a pure conclusionary finding and assumes the point in issue. Unless it can be supported by specific findings and more importantly, specific evidence, it clearly cannot serve to support the judgment reached below.

Equally important with the above points, in considering the findings of the District Court, is the fact that the District Court wholly ignored *all* of the evidence submitted by the defendant Union. Much of that evidence was uncontradicted. Much of it went directly to the effect of the strike upon the national health

and safety. None of it was considered by the court or included within its findings of fact, although the Union tendered to the court proposed findings based upon the evidence submitted by it and pointed out, in objecting to the findings proposed by the Government, that those findings omitted essential facts with reference to the issues disposed of by the findings which had been established by uncontroverted evidence submitted by the defendants.

We have set forth in some detail some of our objections to the findings of fact made by the District Court in order to show to this court, as we believe we must, that there is indeed a substantial question to be determined on this appeal. As to that question, we do not believe that there can be any doubt. Further considerations show the substantial nature of the questions of law presented here.

Not every strike which imperils the national health or safety is enjoinable under the Taft-Hartley Act. Only such a strike which affects an entire industry, or a substantial part thereof, is subject to the national emergency provisions. It is possible that the national health and safety could be imperiled by a strike affecting less than a substantial part of an industry. Such a strike would have to be dealt with by other statutory and executive powers available to the Government, and not under the Taft-Hartley Act.

We concede that the steel strike affects a substantial part of the steel industry. The critical fact, however, is that even if the Government's affidavits be accepted as correct and not controverted by the Union's affidavits, the most that they can be said to prove is that any threat to the national health and safety is caused by the shutdown of a minimal number of steel mills and related facilities out of the hundreds of such mills and facilities involved in the strike. Whether a danger to health and safety caused only by the absence of production from as insignificant a portion of an industry is comprehended within the Taft-Hartley provisions is, in our view, a serious question.

It is undisputed on the record that under normal circumstances only approximately 1% of the steel produced in this country is used for defense purposes, and that the 15% of the industry which is presently operating could satisfy many, if not all, of essential defense requirements. Thus the court below has held, in effect, that under Section 208 of the Taft-Hartley Act, 29 U.S.C. § 178, a strike in an entire industry, involving over 500,000 employees who work in ore mines, shipping, steel producing, steel fabricating, and other related operations, can be enjoined if a court finds that as little as a fraction of 1% of that industry is needed for the health and safety of the nation.

There is evidence in the record to the effect that only a very few plants would need to be reopened in order to satisfy all essential

defense needs. The affidavit of Dr. Raymond J. Saulnier, Chairman of the Council of Economic Advisers of the Federal Government states, as follows, on page 7:

"On this point, the Business and Defense Services Administration of the Department of Commerce declares that 'in order to satisfy defense requirements alone from the standpoint of size, grade, and product, it would be necessary to reactivate 25 to 30 hot rolling mills together with supporting blast furnaces, and Bessemer, electric, open hearth and vacuum-melting furnaces. Additional facilities for pickling, coating, heat treating, cold finishing, shearing, cutting, testing, and the like would also be required. . . .'"

From the affidavit of Dr. Otis Brubaker, the Union's Research Director, we see that there are hundreds upon hundreds of rolling mills and allied facilities in the steel industry. Dr. Brubaker states:

"There are, in the United States, many hundred hot rolling mills, with supporting blasts and steel making furnaces, together with all ancillary facilities required in the production of hot rolled steel products of various sizes, grades and specifications. The 66 steel companies presently operating, with 15.36% of total industry ingot capacity, themselves have several hundred hot rolling mills and relates producing facilities."

It is thus clear and undisputed that any possible threat to the defense effort is limited to the 25-30 hot rolling mills and ancillary facilities referred to by Dr. Saulnier, and that these operations constitute but a tiny fraction of the nation's steel industry involved in the strike. If only those few plants were on strike, the strike could not be enjoined even if the national health and safety were in peril, because the strike would not be one "affecting an entire industry or a substantial portion thereof." Thus the court below held, in effect, that the coincidence of a strike in the entire industry, rather than in just the few plants necessary for defense, makes the strike enjoinable not only at the essential plants *but throughout the industry*.

In our view, this is a perversion of the statute. Clearly the extraordinary injunctive writ must not be invoked unless the precise and carefully worded criteria set forth in the statute are met. Plainly, these criteria are not met by reliance on the coincidence of a national steel strike and an alleged shortage of a few highly specialized steel products manufactured by an infinitesimal number of the plants on strike.

While Congress limited the Taft-Hartley Act's emergency provisions only to industry wide strikes which imperil the national

health and safety, there are other remedies available to the Government to deal with such a strike which is not industry-wide. Thus the Defense Production Act of 1950, 50 U.S.C. App. Sec. 2071, and the Selective Service Act of 1948, 50 U.S.C. Sec. 168, provide practical procedures for the Government to remedy any shortages in the flow of vital materials and products for the defense effort. The full scope of these powers have not been invoked in this strike.

Furthermore the Union has offered to cooperate with the Government in assuring the availability of any steel vital to the defense effort, and has so cooperated when requested by the Government. It proved this in the District Court and repeated its offer. The plaintiff offered no contrary proof.

Under these circumstances we think that there cannot be the slightest doubt as to the substantial nature of our contentions that the court below erred.

2. If we are correct that there are substantial questions to be reviewed here, the question as to a stay here depends upon the exercise of the sound discretion of this Court in the light of the nature of the case, the equities of the parties and the public interest. In considering this question, we should first make clear that we are not asking for delay but for an opportunity for judicial review before such review becomes meaningless as a practical matter.

The Union recognizes that there is a grave public interest in this matter and that delay in the effective date of the District Court's injunction not justified on that basis would be unconscionable. The Union therefore offered in the District Court, and now repeats its offer, to move with the utmost expedition in obtaining prompt adjudication of its appeal herein. The appeal was docketed in this Court within minutes after the order was entered below. The record has already been repaired, certified and delivered to this Court. The Union is prepared to meet any time schedule which this Court may establish. If the Court should so desire the Union is prepared immediately to present its argument on the merits to the Court of Appeals.

3. Under these circumstances, and in view of the serious nature of the questions presented, we believe that the granting of a stay pending disposition of the appeal is not only proper but necessary to properly protect the rights of the parties and to permit the judicial review for which Congress provided. In making this submission we recognize that the interests of the public and of the nation must be balanced against the interests of the litigants here. But, we submit, any consideration of the equities clearly indicates the propriety of granting the stay requested by the Union.

On the one hand, from the viewpoint of the public and the nation, there is the undeniable fact that the District Court has found that the strike in the steel industry does create a threat to the national health and safety. The nature and immediacy of that threat, however, can properly be judged only in the context of the delays of almost a third of a year which the Government itself has permitted to occur before seeking an injunction. This is not a longshore strike in which immediate action was required to prevent actual damage to the national health and safety. This is a situation in which the President himself delayed 86 days before even initiating the Taft-Hartley procedure, and granted the Board of Inquiry a full 80 days thereafter to report to him as to the issues. These actions themselves make it clear that a delay of a few more days, indeed even a week, would not irreparably harm the national interests. The Government itself having proceeded at a leisurely pace surely cannot be heard to say that the rights of the union must be summarily denied, without any possibility of review because of the necessity for haste.

On the other side of the coin, we have the situation which faces the Union, and the industry too, if a stay pending appeal is denied. The injunction granted herein is a temporary injunction in fact although a final injunction in name. It must, under the statute, be dismissed in 80 days. Congress specifically provided that such an injunction should be appealed. Such an appeal can have no meaning, however, if, while it is pending, the injunction has expended its full force.

If the District Court's order should not be stayed and the injunction reversed there will be tremendous damage not only to the Union, but also to the Employers. As to the Union, its strike in which 500,000 individual Steelworkers have sacrificed their wages for a period of more than 3 months will be broken. As to the Companies, they will have undertaken the very expensive task of reopening their mills and starting their furnaces, only to have to shut them down again if the injunction is reversed. Balancing, therefore, the injury to the plaintiff which will be suffered if the stay is granted and the decision below affirmed against the damage which will be suffered to the other parties if the stay is denied and the injunction is reversed, we think it clear that under the conditions under which we ask for this stay it should be granted.

I. The Congress of the United States did not mean to entrust to a single District Judge unreviewable rights to require free men to work or free industry to operate. The Congress of the United States provided definite standards and required a jurisdictional finding as to the existence of an immediate danger to the national health and safety before any such injunction should

be issued. The Congress of the United States provided in Section 208 for appellate review of such injunctive orders.

All of these provisions become meaningless if the *status quo* is not preserved and the Union is not given an opportunity to present its contentions on appeal before the injunctive order becomes effective. Once the injunction becomes effective the damage is done. Furthermore, if this appeal is handled in the ordinary course, the injunction provided under the Act will have long been dismissed before the appeal can be heard. There will in fact be no judicial review. We most seriously urge that such was not the contemplation of Congress and that, in providing for judicial review, Congress must have anticipated and indeed intended that substance be given to the right of appeal for which it provides. Such substance can be given to that right only if the defendant Union's application for a stay is granted, subject to such conditions as to briefs and argument as the Court may direct.

Respectfully submitted,
Arthur J. Goldberg, Attorney for
United Steelworkers of America

APPLICATION FOR ADVANCEMENT OF CONSIDERATION OF APPEAL

Now comes the United Steelworkers of America, one of the defendants in the above-entitled matter, having appealed to this Court from the Order of the District Court from the Western District of Pennsylvania dated October 21, 1959, granting an injunction against the said defendant and others as therein specifically stated, and having obtained a stay of said Order, prays that this appeal be advanced for immediate consideration.

In support of this motion the defendant, United Steelworkers of America, shows to the Court as follows:

It is in the public interest for this appeal to be determined on the merits forthwith. This appeal involves an injunction under Sections 206-210 of the Labor-Management Relations Act, 1947 (the "national emergency provisions") against the strike in the basic steel industry which began July 15, 1959, and appellant has raised substantial question concerning the findings of fact and conclusions of law of the district court.

Appellant specifically undertakes to argue this appeal immediately, or as soon as this Court may determine, on the basis

the record below, its memorandum presented below, and the additional memorandum presented in its application for a further stay pending appeal filed contemporaneously herewith.

Respectfully submitted,
s/ Arthur J. Goldberg
Attorney for
United Steelworkers of America
Appellant

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff

vs.

UNITED STEELWORKERS OF AMERICA
et al.

Defendants.

No. 13,640

Philadelphia, Pa., October 22, 1959

Before HON. JOHN BIGGS, JR., Chief Judge, HON. HERBERT F. GOODRICH, HON. WILLIAM H. HASTIE

PRESENT: WALTER P. ALESSANDRONI, United States Attorney, and GEORGE COCHRAN DOUB, ESQ., and DONALD MacGUINEAS, ESQ., appearing on behalf of the Government.

ARTHUR J. GOLDBERG, ESQ., DAVID E. FELLER, ESQ., ELLIOTT V. BREDHOFF, ESQ., and JERRY D. ANKER, ESQ., appearing on behalf of the United Steelworkers of America.

JOHN C. BANE, JR., ESQ., appearing on behalf of mentioned producing companies.

WILLIAM KELLY MONTAGUE, ESQ., appearing on behalf of a number of independent ore companies.

JUDGE BIGGS: The Court has directed a court reporter to be present to transcribe the argument. We take it that the parties have no objection to that, and if there is no objection we will charge it as part of the costs.

Mr. Doub.

MR. DOUB: If the Court please, the Government is prepared to go to final hearing, provided that the case may be heard on the briefs filed in the court below, so that there will not be necessity in this critical national emergency to permit or require the parties to file briefs at some later time.

JUDGE BIGGS: The Court perceives no objection to that. Thank you.

Mr. Goldberg, you may proceed. May we have a copy of your briefs in the court below.

MR. GOLDBERG: There is attached to the memorandum the application for a stay which we have filed with the Court and I believe is in your possession.

JUDGE BIGGS: Thank you, sir. This is the memorandum?

MR. GOLDBERG: Yes.

JUDGE BIGGS: Thank you.

MR. GOLDBERG: May it please the Court, before I proceed to a discussion of the merits of this appeal, and so that the record in this court may be clear, I would like the record to show—and I am sure it does—that there has been filed in this court the application of the union for a further stay. I say that because Judge Staley yesterday stated that his stay shall continue in effect, provided that the union at 10:00 A.M. files an application for a further stay, and that if application be so made, this stay shall continue until the Court of Appeals acts thereon. I take it that the stay is in effect until you then act.

JUDGE BIGGS: I take it the application was filed promptly.

THE CLERK (Mrs. Creskoff): It was so filed.

JUDGE BIGGS: Let me interrupt for just a second, Mr. Goldberg. I am reading the stay order of Judge Staley. I am not sure whether Judge Staley meant to continue the stay. He says, until the Court of Appeals acts thereon. I think it would probably be desirable for this court to further stay the order until the appeal on the merits is disposed of and let the clerk enter an order to that effect upon the minutes, that the stay is continued by direction of this court.

JUDGE HASTIE: A part of the order directs the parties immediately to resume collective bargaining. Do you know any reason why that should be stayed, that portion should be stayed, Mr. Goldberg?

MR. GOLDBERG: Only the physical inability of some of the negotiators to be present for collective bargaining, but we do not intend that that part should be stayed. We will carry out our obligation in that area.

JUDGE BIGGS: Suppose in our stay order we except from the stay order that portion which relates to further collective bargaining.

MR. GOLDBERG: That is quite agreeable, Your Honor.

JUDGE BIGGS: The Court will follow this order which is now put upon the minutes with a more formal order, dating its commencement as of the time of this hearing.

[Argument of counsel omitted from printing.]

JUDGE BIGGS: Thank you, gentlemen. We will not be able

to reach a decision, of course, in this case today or tomorrow. We will, however, endeavor to dispose of it early next week, we hope and believe.

This will conclude the argument. The stay will be continued as ordered, and the Court will stand adjourned until Wednesday, October 28th, at 10:30 o'clock in the morning.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 13,056

UNITED STATES OF AMERICA

vs.

UNITED STEELWORKERS OF AMERICA, et al.
UNITED STEELWORKERS OF AMERICA, Appellant

Present: BIGGS, Chief Judge, and GOODRICH and HASTIE, Circuit Judges.

Upon consideration of the oral application of counsel for appellant in the above-entitled case,

It is ORDERED that all the provisions of the injunction issued by the United States District Court for the Western District of Pennsylvania on October 21, 1959, except for paragraph 5 of said injunction, be and they hereby are stayed until further order of this Court;

It is further ORDERED that paragraph 5 of said injunction, which provides that during the period of the injunction the several defendants are directed to engage in free collective bargaining in good faith for the purpose of resolving their labor disputes and to make every effort to adjust and settle their differences, shall remain in full force and effect until further order of this Court.

By the Court,
BIGGS, Chief Judge

October 22, 1959

TRANSCRIPT OF RECORD
Vol. II

IN THE
Supreme Court of the United States

OCTOBER TERM, 1959

No. 504

UNITED STEELWORKERS OF AMERICA,
Petitioner,

v.

UNITED STATES OF AMERICA

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

Press of Allen, Lane & Scott, Philadelphia

INDEX

PAGE

Further Proceedings in the United States Court of Appeals for the Third Circuit

Opinion, Biggs, *C. J.* 286

Dissenting Opinion, Hastie, *J.* 310

Judgment 317

Opinion of the Court *Per Curiam* 318

Order as to Stay 319

Memorandum Suggesting Mootness as to Kaiser Steel Corporation 319

Stipulation as to Kaiser Steel Corporation 321

Per Curiam (Kaiser Steel Corporation) 321

Order (Kaiser Steel Corporation) 322

Supreme Court of the United States

October Term, 1959. No.

United Steelworkers of America,
Petitioner,

v.

United States of America

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

United States Court of Appeals
for the Third Circuit

No. 13,056

United States of America

v.

United Steelworkers of America,
Acme Steel Company,
Acme-Newport Steel Company,
Allegheny-Ludlum Steel Corporation,
Wallingford Steel Co.,
Armco Steel Corporation,
Armco Drainage and Metal Products, Inc.,

National Supply Company.
Southwest Steel Products.
The Babcock & Wilcox Co.,
Bethlehem Steel Company.
Bethlehem Cornwall Corporation
The Dundalk Company.
Buffalo Tank Corporation
Bethlehem Limestone Company.
Bethlehem Transportation Corporation.
Colorado Fuel and Iron Company.
Crucible Steel Company of America.
Donner-Hanna Coke Corporation.
Great Lakes Steel Corporation.
The Hanna Furnace Corporation;
Stran-Steel Corporation.
National Steel Products Corporation.
Inland Steel Company.
Interlake Iron Corporation.
Jones & Laughlin Steel Corporation.
Union Dock Company.
Kaiser Steel Corporation.
Lukens Steel.
McLouth Steel Corporation.
Moltrup Steel Products Co.,
Northwestern Steel & Wire Co.,
Pittsburgh Steel Company.
Pittsburgh Tube Co.,
H. K. Porter Co., Inc.,
Republic Steel Corporation.
Air Vac Products Co.,
John A. Roebling's Sons Corporation.
Sharon Steel Corporation.
Shenango Furnace Company.
Superior Drawn Steel Company.
United States Steel Corporation.
Columbia Iron Mining Company.
Wheeling Steel Corporation.

The Youngstown Sheet and Tube Company.
Judson Steel Corporation.
H. H. Robertson Company.
Joseph T. Ryerson and Son, Inc.,
Valley Mould and Iron Corporation.
Wyckoff Steel Company.
Ashtabula and Buffalo Dock Company.
Boland and Cornelius.
Brown and Company.
International Harvester Company.
Cleveland Cliffs Iron Company.
Mesabi Cliffs Mining Company.
Humboldt Mining Company.
Negaunee Mine Company.
Marquette Iron Mining Company.
Coons Pacific Company.
Lerch Brothers, Inc.,
M. A. Hanna Company.
Hanna Iron Ore Division of
National Steel Corporation.
Hanna Ore Mining Company.
Hanna Mining Company.
Morton Ore Company.
Butler Brothers.
Douglas Mining Company.
Ozark Ore Company.
Montreal Mining Company.
W. S. Moore Company.
North Range Mining Company.
Pickands Mather and Company.
The Balkan Mining Company.
Bennett Mining Company.
Crete Mining Company.
Cayuna Ore Company.
Erie Mining Company.
Hoyt Mining Company.
Lake Mining Company.

Mahoning Ore & Steel Company,
Odanah Iron Company,
Puritan Mining Company,
The Verona Mining Company,
The Youngstown Mines Corporation,
Western Mining Company,
The Sunday Lake Iron Company,
The Mauthe Mining Company,
Pioneer Mining Company,
Pittsburgh Pacific Company,
Reserve Mining Company,
St. James Mining Company,
Skubic Brothers Company,
Susquehanna Ore Company,
Zenith Mining Company,
Snyder Mining Company,
Oglebay Norton Company
UNITED STEELWORKERS OF AMERICA,

Appellant

Argued October 22, 1959

Before BIGGS, *Chief Judge*, and GOODRICH and HASTIE, *Circuit Judges*.

OPINION OF THE COURT

(Filed October 27, 1959)

By BIGGS, *Chief Judge*.

The suit at bar was instituted by the United States *parens patriae*, against United Steelworkers of America (the "Union"), an unincorporated labor union, representing, among others, employees in the steel industry which is engaged in trade, commerce, and transportation among the several States and with foreign nations and the production of goods for commerce as defined in the Labor-Management Relations Act, 1947, as amended, 29 U. S. C. A. § 141 *et seq.*, 61 Stat. 136 *et seq.* The defendants, ninety-six in number, (the "Steel Companies") are variously engaged in one or more of the stages

steel production, including the mining and transporting of iron ore, the operation of blast furnaces for the conversion of iron ore into pig iron, the production of steel ingots, the rolling and shaping of steel ingots into steel products and in the fabricating of finished products.

Collective bargaining agreements between the Union and the Steel Companies expired on June 30, 1959, and unresolved labor disputes between the Steel Companies and their employees represented by the Union as to the terms and conditions of new agreements resulted in strikes of the employees commencing on July 15, 1959 and continuing until the present time. On October 9, 1959, the President of the United States issued Executive Order No. 10843 creating a Board of Inquiry, 29 U. S. C. A. 176 and 177, to inquire into the issues involved in the labor disputes and in the Executive Order referred to stated that in his opinion the strike was affecting a substantial part of an industry engaged in trade, commerce and transportation among the several States and with foreign nations and in the production of goods for commerce, and that, if permitted to go on, the strike would imperil the national health and safety. 29 U. S. C. A. 176. The Board of Inquiry appointed and required into the issues involved in the labor disputes and made its report as required by the 60 day, Dec. 19, 1959. Upon its report the President filed the same with the Federal Mediation and Conciliation Service making its contents available to the public, and instructed the Attorney General of the United States to petition the instant proceedings in the court below.

That court, after extensive arguments and stipulations of the parties whereby they waived service of process and submitted themselves to the jurisdiction of the court and also agreed that the hearing on the pet-

tion and affidavits without oral testimony should be a final one, entered an injunction which ordered the Union and its officers and agents to end the strike and also required the Steel Companies to make their plants available for the Union members so that they might resume work thereon. This injunction by the terms of the Act must be dissolved in 80 days. 28 U. S. C. A. 180. The Union has appealed from this injunction. The Judgment is a final one. 28 U. S. C. A. 1291. No jurisdictional question in the ordinary sense is presented here.

The Constitutionality of the Statute

We are not *de novo*, however, with a constitutional challenge asserted by the Union as to the capacity of the Court below to act in this matter. The Union relies

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Although the courts we mark off [illegible] federal courts be the District Courts, Courts of Appeals, and the Supreme Court of the United States, there is [illegible] other category of federal courts that is frequently and properly so called. The largest also known as "Article I" courts are created "in accordance with Article III Section 1 [illegible] vest all legislative Powers herein granted shall be vested in a Congress [illegible] and such inferior Courts as the Congress may from time to time ordain and establish." These courts [illegible] Article III Section 1 [illegible] which the judges [illegible] and the Article III Section 1 [illegible] courts have the protection of Article III Section 1 [illegible] during good behavior and cannot be [illegible] Congress [illegible]

"Legislative" Courts [illegible] the other hand [illegible] legislative [illegible] the power of the United States [illegible] Article III Section 1." The [illegible] created by the Congress [illegible] powers under Article I, Section 8 of the Constitution [illegible] [illegible] and [illegible] [illegible] [illegible] which have been held to be legislative courts include the Territorial Courts, the Court of Customs and Patent Appeals, the Customs Court, and the Court of Claims. See 1 Moore, Federal Practice 0.4[3] (2d ed. 1959). The [illegible]

Article III, Section 2 of the Constitution which limits the courts of the United States to the judicial function of adjudicating justiciable controversies, citing National Mutual Ins. Co. v. Tidewater Transfer Co., 337 U. S. 582 (1949). Put shortly, it is the contention of the Union that there was no "case or controversy" before the court below which it could adjudicate in the sense required by the Constitution. In this connection the Union points out that Section 178, Title 29, U. S. C. A., states that the court "shall have jurisdiction to enjoin any such strike . . . but, it contends, an injunction can issue lawfully only if it is employed as a remedy to enforce a pre-existing legal duty; that here the injunction creates the right and also in the same breath, enforces it. The Union relies on the kind of classic equity proceedings where an injunction is issued to prevent the continuance of a tort, the continued performance of a contract, or to enforce a duty already imposed by statute. The Union concedes that both it and the Steel Companies had and have a duty to bargain collectively in good faith and if it had failed to do so sanctions could be imposed upon it under the National Labor Relations Act because of such failure. But the Union argues that while there is a controversy between it and the Steel Companies that controversy was not before the court below in a justiciable form.

[illegible]

[illegible]

For a general discussion of the jurisdictional problem involved, see, Hart & Wechsler, The Federal Courts and the Federal System 482 (1953), and 1 Moore, supra, at 1040.

Unfortunately, though the Act is over twelve years old, we have found but one reported case which directly adjudicates this issue of constitutionality under Article III, Section 2; *viz.*, United States *v.* United Steelworkers of America, 202 F. 2d 132, 138-39 (2d Cir. 1953), affirming United States *v.* American Locomotive Co., 109 F. Supp. 78 (W. D. N. Y. 1952), cert. denied, 344 U. S. 915 (1953) (Certiorari in this case was applied for and denied prior to the adjudication in the Court of Appeals.). Cf. Youngstown Co. *v.* Sawyer, 343 U. S. 579, 586 (1952).

We think it desirable to examine this question *de novo*. It is clear that Sections 176-180 of the Act, 29 U. S. C. A., embody and attempt a legislative solution of problems rising from labor disputes which lead to strikes or lockouts and which, because of their scope

There are, however, some thirteen other cases cited in the brief of the United States in which the provisions of Section 178, Title 29, U. S. C. A. were enforced seemingly without constitutional questions being raised. They are as follows: United States *v.* Carbide and Carbon Chemicals Corp., Civ. No. 1093, E. D. Tenn., March 19, 1948 (no opinion); United States *v.* National Maritime Union (CIO); Civil No. 46-299, S. D. N. Y., June 14, 1948 (unreported); United States *v.* National Maritime Union (CIO), Civil No. 25686, N. D. Ohio, June 14, 1948 (no opinion); United States *v.* International Longshoremen's and Warehousemen's Union (CIO), 78 F. Supp. 710 (N. D. Cal. 1948); United States *v.* International Longshoremen's Ass'n (AFL), Civil No. 47-157, S. D. N. Y., Aug. 21, 1948 (no opinion); United States *v.* International Union, United Mine Workers, 77 F. Supp. 763 (D. D. C. 1948), appeal dismissed and aff'd in part 177 F. 2d 29 (D. C. Cir. cert. denied 338 U. S. 871 (1949); United States *v.* International Union, United Mine Workers, 89 F. Supp. 187 (D. D. C. 1950); United States *v.* International Union, Mine, Mill and Smelter Workers, Civil No. 3075, D. Colo., Sept. 5, 1951 (no opinion); United States *v.* International Longshoremen's Ass'n, 116 F. Supp. 255, 262 (S. D. N. Y. 1953); United States *v.* Union Carbide and Carbon Corp., Civil No. 2456, E. D. Tenn., Aug. 27, 1954 (unreported); United States *v.* International Longshoremen's Ass'n, 147 F. Supp. 425 (S. D. N. Y. 1956); United States *v.* Goodyear Atomic Corp., Civil No. 3994, S. D. Ohio, May 15, 1957 (no opinion); United States *v.* International Longshoremen's Ass'n, Civil No. 151-280, S. D. N. Y., Oct. 1959 (unreported).

impact on national health or safety, may give rise to national emergencies. There was a clear-cut recognition by Congress that labor strife affects adversely important economic and social interests of the public. This appears from the National Labor Relations Act itself enacted long prior to the Labor-Management Relations Act with which we are immediately concerned. The latter Act appears to have two major objectives and it is not necessary to decide here which has primary or secondary status. Congress intended the Labor-Management Relations Act to operate by its terms when a strike "affects an entire industry or a substantial part thereof • • •" and "will imperil the national health or safety • • •" 29 U. S. C. A. § 178.

The purposes of the Act are set out in Section 141(b) as follows: "Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations • • • recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.", and "It is the purpose and policy of this • • • [Act], in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce."

The Congressional intent shown here is, first, to pro-

tect the rights of both employers and employees and, second, to bring to an end industrial strife which affects commerce to such a degree as to menace the general welfare. See 29 U. S. C. A. Sections 178 and 179. Whether or not the injunction appealed from has or can have the effect of settling the instant labor dispute depends on the proof offered and goes to the issue of the sound exercise of legal discretion on the part of the court below. This phase of the case is discussed at a later point in this opinion.

It may be helpful to restate in a few concrete sentences our conception of the congressional intent as expressed in the Act. The underlying concept is one of tort, tortious conduct which affects the national health or safety. See Section 141(b), quoted *supra*. That tortious conduct consists of permitting a labor dispute to continue to the point where national health or safety is imperiled. In point of time the action or non-action of employers and employees becomes wrongful when national health or safety is imperiled. The President then states his opinion that such is the case and constitutes a Board of Inquiry which proceeds as required by law but without recommendations, the making of recommendations being expressly prohibited by Section 176, 29 U. S. C. A. The United States then brings a suit such as that at bar and it becomes the duty of the District Court to find or not to find that the circumstances are such, as prescribed in Section 178, that the national health or safety is imperiled. It would, of course, be impossible ordinarily to fix the exact point in time at which the provisions of the Labor-Management Relations Act becomes operative. The peril must exist at the time the jurisdiction of the United States District Court is invoked and it is the duty of the court in the exercise of its sound legal discretion under the Act to issue an injunction if it finds the necessary operative facts.[3]

[3] We point out again that Section 178 (a) (ii) provides that the "court shall have jurisdiction to enjoin such strike * * *"

In respect to the constitutionality of the Act, the Court of Appeals for the Second Circuit in United States v. United Steelworkers of America, *supra* at p. 139, said: "The statute creates the right on the part of the public to be protected from the danger of such a strike or lock-out. Whether there is an existing or threatened strike or lock-out which, under the statute, is an invasion of the rights of the public presents the usual kind of case or controversy which is justiciable by a court."

In United States v. International Longshoremen's Ass'n, 116 F. Supp. 262, 265 (S. D. N. Y. 1953), Judge Weinfeld said: "In exercising jurisdiction under the National Emergencies provisions of the law, the Court acts in the public interest and not in the adjudication of private rights of the contending parties." It is difficult to quarrel with the congressional objectives.

The legislative history supports our view as to the the purposes of the Labor-Management Relations Act. It is true, as the Union points out, that the legislation now embodied in Section 178 as it was originally proposed in the House of Representatives had broader scope. Under it the President would have had the power to seek an injunction whenever "a labor dispute has resulted in, or imminently threatened to result in, the cessation or substantial curtailment of interstate or foreign commerce in transportation, public utility, or communication services essential to the public health, safety, or interest,"[1] but in the Senate version, which became what is now Section 178, Senator Taft limited the applicability of the emergency provisions of the statute to situations in which the national "health or safety" was or might become imperiled. But the legislation as enacted nonetheless seems to us to amply embrace the present circumstances.

[1] See H. R. 3020, Section 203(a), 80th Cong., 1st Sess. See also "Legislative History of the Labor-Management Relations Act, 1947" (2 Vols.) published by National Labor Relations Board.

We are here concerned with the giving of relief by a court of equity in a situation which is alleged to have impaired and seriously menaces the public interest. *Cf.* Railroad Commission *v.* Pullman Co., 312 U. S. 496, 500 (1941), and Virginian Ry Co. *v.* System Federation, 300 U. S. 515, 552 (1937). The circumstances of the case at bar are somewhat analogous, albeit in different terms, to those in *In re* Debs, 158 U. S. 564, 583-590 (1895). In the cited case the United States was held to have *locus standi*, in effect as *parens patriae*, to maintain a proceeding in the nature of a suit to abate a public nuisance. This is a classic field for the interposition of the powers of a court of equity.

Without placing blame upon any of the defendants here, the Union or the Steel Companies, it is alleged, and the government insists that it has proved, that their failure to reach an agreement by the processes of collective bargaining has caused them, and it is feared their country with them, to fall into a slough from which it is necessary to lift them, if only for an 80-day period, lest national health and safety be imperiled. The use of the injunction in a labor dispute, so frequently abused in years past, led to the passage of the Norris-LaGuardia Act, 29 U. S. C. A. §§ 101-115, which prohibited the injunction in a bona fide labor dispute. But the Labor-Management Relations Act specifically has limited the exemption against injunctions in labor disputes granted by the Norris-LaGuardia Act. See Section 178(b), 29 U. S. C. A. However undesirable we may deem the use of the injunction in labor disputes to be, nonetheless Congress has seen fit to reinstate it to the limited degree indicated. The old law of the injunction in the labor dispute, to the extent prescribed, seems to have been returned by Congress to at least part of its former standing and we are compelled to adhere to the posture which Congress has placed upon it.

Historically injunctions in labor disputes dealt with the status of groups, sometimes large groups, of employees. Such decrees may perhaps be described, not entirely inaptly, as "status" judgments. Groups of employees were ordered to return to work or face contempt proceedings. Rarely was an employer subject to a decree preventing lockouts, but this is beside the point. When a court enters a status judgment such as that at bar, in our opinion it acts judicially and not legislatively. If this were not so a substantial portion of the jurisdiction granted to courts of the United States by Congress would fall within the interdiction of Article III, Section 2, of the Constitution. Orders of the National Labor Relations Board frequently would come into such a category, as would orders of the Securities and Exchange Commission, as well as orders of the Interstate Commerce Commission reviewable by the United States district courts under the Urgent Deficiencies Act. Petitions for review of decisions of the United States Tax Court would also fall within the interdiction. Proceedings to require the issuance of a patent by the Commissioner of Patents under R. S. 4915 would also meet the ban, Morgan *v.* Daniels, 153 U. S. 120 (1894), as would proceedings for naturalization. Tutun *v.* United States, 270 U. S. 568 (1926). *Cf.* McGrath *v.* Kristensen, 340 U. S. 162, 167-168 (1950). The line dividing the powers of the legislative tribunal as distinguished from those of the judicial tribunal is of necessity a fine one.

We conclude that the court below was called upon to make and did make a judicial rather than a legislative type of judgment. Our conclusion in this regard is confirmed, we think, by contrasting the statute as enacted with the House proposal which was rejected. The House would have called upon a district court to act whenever in its judgment the public interest was imperiled. This would have left the court at large in deciding the expediency of action guided only by statesmanlike conception

of the public welfare. But, as enacted, the statute requires decision whether the evidence adduced in a case shows serious interference with essential national defense activities or threatened impairment of public health. See note 4, *supra*. This is specific enough and factual enough to bring the inquiry within the area of judicial decision as distinguished from legislative judgment, as in our policy the two are distinguished.

We are of the opinion, for the reasons stated, that the proceeding at bar does constitute a justiciable controversy and does not incur the interdiction asserted by the Union to arise under Article III, Section 2, of the Constitution.

FINDINGS OF FACT BY THE COURT BELOW.

All the necessary jurisdictional facts were found by the court below in its findings of fact, Nos. 1 to 16, inclusive. Findings Nos. 9, 10, 11, 12, 13, 15 and 16, however, are set out in this opinion for the benefit of the reviewing Court. They are as follows:

"9. The strike on the part of the Union resulted from unresolved labor disputes between defendant employers, who are engaged in one or more of the various stages of steel-production, including the mining and transport of iron ore by railroad or vessel, the operation of blast furnaces for the conversion of iron ore into pig iron, the production of steel ingots, the rolling and shaping of steel ingots into various shapes and forms of steel products, and the fabricating of certain finished products, and certain of their employees represented by the Union.

"10. The Board of Inquiry made an investigation of the issues and attempted to have the defendants resolve the dispute by free and collective bargaining. These efforts on the part of the Board of Inquiry were unsuccessful and the disputes remain unresolved.

"11. The report of the Board of Inquiry concludes that 'the parties have failed to reach an agreement and we see no prospects for an early cessation of the strike. The board cannot point to any single issue of any consequence whatsoever upon which the parties are in agreement.' Unless the Court grants the injunction sought by the United States the strike will continue for an indeterminate period.

"12. The strike affects a substantial part of the steel industry of the United States, which is engaged in trade, commerce and transportation among the several States and with foreign nations and in the production of goods for commerce.

"13. The strike, which commenced on July 15, 1959 and has continued until the present time, has resulted in the closing on July 15, 1959 of facilities producing at least 85% of the total steel production of the United States. Inventories of steel have dropped from 24,800,000 tons on July 15, 1959 to approximately 10,000,000 tons. This is below the normal inventory level and is below the level required to sustain continued production of industries and businesses dependent upon steel products. Approximately 500,000 striking members of the Union are now unemployed and more than 265,000 employees are idle in other industries by reason of the steel strike. The 765,000 unemployed support families numbering over 2,000,000 persons. If the strike were to continue, the total number of workers made idle by it would probably reach approximately 1,775,000 by the end of November and approximately 3,000,000 by the end of December. By that time more than 9,000,000 people would probably be affected by the strike.

"15. The strike, which has now been in existence for more than 95 days, if permitted to continue, will imperil the national health and safety in the following respects:

"(a) Certain items of steel required in top priority military missile programs of the United States are not made by any mill now operating, nor available from any inventory or from imports. Any further delay in resumption of steel production would result in an irretrievable loss of time in the supply of weapons systems essential to the national defense plans of the United States and its allies.

"(b) The planned program of space activities under the direction of the National Aeronautics and Space Administration has been delayed by the strike and will be further delayed if it is continued. Specifically, project MERCURY, the nation's manned satellite program, which has the highest national priority, has been delayed by reason of delay in construction of buildings essential to its operation. This program is important to the security of the nation. Other planned space programs will be delayed or threatened with delay by a continuation of the strike.

"(c) Nuclear Submarines and the naval shipbuilding program other than submarines, including new construction, modernization, and conversion, have been affected by reason of the inability to secure boilers, compressors, and other component parts requiring steel. Products of the steel industry are indispensable to the manufacture of such items and delay in their production will irreparably injure national defense and imperil the national safety.

"(d) Exported steel products are vital to the support of United States bases overseas and for the use of NATO allies and similar collective security groups. The steel strike, if permitted to continue, will seriously impair these programs, thus imperiling the national safety.

"(e) A continuation of the strike will have the ultimate effect of adversely affecting millions of small

business enterprises, almost all of which are directly or indirectly dependent upon steel products and most of which lack the resources to stock large inventories. In addition, it will have the effect of idling millions of workers and a large proportion of the facilities in industries dependent upon steel for their continued operation. Manufacturing industries directly dependent on steel mill products account for the employment of approximately 6,000,000 workers and normal annual wages and salaries totalling approximately $34,000,000,000. The products of these industries are valued at over $125,000,000,000. The national health will be imperiled if the strike is permitted to continue.

"16. Such results, if the strike is permitted to continue, will imperil the national health and safety and thereby cause irreparable damage and injury to the United States of America for which there is no adequate remedy at law."

PROOF.

This case was submitted to the court below on affidavits and without oral testimony. This method was agreed to by both sides. The result of this method of proof is that the rule which calls upon us to support the findings of the district judge unless clearly erroneous is inapplicable so far as it has to do with the trial court's opportunity to observe the demeanor of the witnesses and like matters. Fed. R. Civ. Proc. § 52(a), 28 U. S. C. A. Moreover, it necessarily deprives the instant record of any elaboration of the evidence of the various affiants which could have been brought out had they appeared in person as witnesses and had been subjected to examination and cross-examination in the usual fashion.

The Union contends that the contents of these affidavits are insufficient to bring the case within the reach of

the Labor-Management Relations Act. It points out that the scope of Section 178, 29 U. S. C. A., is limited to situations which will imperil "the national health or safety". The Union says that the country, despite the strike, is prosperous, and that a comparatively small part of the steel output is needed for national defense work and that the steel required for "health" in order to meet the needs of hospital construction and the like is very limited indeed. Moreover, asserts the Union, if the United States needs more steel for any particular defense use or uses, the Union, so far as it has power to do so, will cooperate patriotically in seeing that the necessary supply of steel is forthcoming. Furthermore, the Union shows that there is still a good sized inventory of steel on hand, that steel is available from foreign sources, and that any contention that the industrial dispute with which we are concerned is imperiling the safety and health of the nation is unrealistic because there is no immediate threat of harm.

That portion of the Union's argument that centers attention on today's calm rather than on tomorrow's approaching storm is not well taken. The words of Section 178(a)(iii) speak to the future, viz.: "If [the strike is permitted * * * to continue [it] will imperil the national health or safety", as has been repeatedly pointed out, is the pertinent phrase. How far into the future may the United States and the courts look? The Act contains no definition. But there is testimony in the record that the current supplies of steel are very rapidly diminishing. Nor does the proffer of the Union's assistance to get a plant or plants open help much here. The steel industry is too vast and too complicated to be segmented so as to make such a desirable result practicable.

The affidavit of Dr. Raymond J. Saulnier, Chairman of the Council of Economic Advisers, comments cogently on the Union's suggestion that there be a selective reopening of a small number of mills to meet national defense needs. Dr. Saulnier states:

"Steel is not chemically or physically uniform; its products comprise a vast variety of items, made and further processed in specialized facilities of many different mills and plants. * * * Steel is produced through closely interrelated processes that often can not be separated technically or economically to allow production of items 'needed' * * * omitting items 'not needed.' On this point, the Business and Defense Services Administration of the Department of Commerce declares that 'in order to satisfy defense requirements alone from the standpoint of size, grade, and product, it would be necessary to reactivate 25 to 30 hot rolling mills together with supporting blast furnaces, and Bessemer, electric, open hearth and vacuum melting furnaces. Additional facilities for pickling, coating, heat treating, cold finishing, shearing, cutting, testing, and the like would also be required. To reopen these plants for the production of steel products to meet only defense requirements would be totally impracticable. The problems of scheduling the limited tonnages involved, plus the cost and technical difficulty of start ups and shut downs would appear to be insurmountable. * * *

"Obtaining adequate supplies of * * * essential civilian items of steel, like obtaining steel for defense purposes, would clearly require the reopening of more than just a few mills. It would also require the reopening of many related facilities for supplying the component materials of steel making and for processing, finishing, and distributing steel products.

"Even if it were technically possible to resume steel production on this selective basis, to do so would be exceedingly uneconomic and wasteful. Presumably the Federal Government would be required to underwrite some part of the costs of such a wasteful opera

> tion of facilities. For government to undertake such a grotesque, inefficient and costly organization of our steel-producing facilities by reason of a national strike would be offensive to the public conscience, as well as to the public interest."

Other affiants are cabinet officers or the heads of government departments. It is true that some of the statements in the affidavits represent conclusions on facts rather than statements of present facts and of necessity they contain some element of prognosis. These witnesses were entitled to look to the future for the Act itself so looks. Moreover, as was necessarily admitted at the argument before this court, these cabinet officers and department heads speak as experts in their fields of governmental operations. As experts the affiants were entitled to state conclusions as well as facts for the benefit of the court below. The court below was entitled to weigh the testimony in a different light from that of a witness who testifies that a motor car was or was not on a portion of the highway where it did not lawfully belong.

The affidavits referred to contain strong statements indicating that the effect of a prolongation of the present strike would definitely imperil the national health and safety and that disaster must ensue if the strike continues. Secretary of Commerce Mueller stated:

> "Steel plays a role in our economy and lives that is crucial in the most literal sense of the word. Indeed, the use of steel in our economy is so pervasive and important that our whole system of production and distribution and our national security, health, and safety are being seriously impaired by the prolonged interruption in its availability.
>
> . . . . . .
>
> "In response to Department of Defense requests for aid in the procurement of items not currently

being produced, the Department of Commerce has been unable to carry out its responsibility to be of assistance. It is clear that a continuation of the steel strike will lead to extended delays in military construction and production, including the missile and satellite programs.

. . . . . .

"The steel strike if permitted to continue will seriously impair our security and defense program, thereby imperiling the national safety.

. . . . . .

". . . it is my opinion that the aforesaid strike, if permitted to continue, will do irreparable damage to our foreign trade, to our domestic trade, and to our defense posture. It will therefore seriously imperil the national health and safety."

Acting Secretary of Defense Gates was no less positive in what he had to say:

"I can state unequivocally of my knowledge that steel is one of the most essential elements in the national defense program of the United States and that beyond a certain point of delay in normal deliveries there occurs an irreparable injury to the national defense and consequently to the national safety.

"In my opinion and in the opinion of those persons in the armed services who have the greatest knowledge of these matters, such a point has now been reached and any further delay in resumption of steel production would result in an unretrievable loss of time in the supply of weapons systems essential to the national defense plans of the United States and its allies.

. . . . . .

"Three basic ballistic missile weapon systems are the ATLAS, TITAN, and POLARIS. Of these the first two

require land based launching sites involving both above and below ground facilities using large quantities of special steels. The POLARIS weapon system includes not only the missile itself but, as well, a special design of nuclear submarine for launching. In the unique design of these weapons are the facilities which are required to make them operational. A significant portion of the steel specified in the procurement contracts is of a composition not common to commercial usage nor available from existing civilian inventories by exercise of allocation or eminent domain powers of the Government.

"In addition to the necessity for special alloys and steel compositions, these programs in many cases require special sizes and shapes, many of which can be fabricated only by firms having a long experience in their production and the necessary special facilities therefor. In summary, the shortage of steel for the missile program is not a problem solvable by the mere exchange of other types and forms of steel available in inventories still existing for other purposes or in commercial stocks.

. . . . . .

"In my opinion and in the opinion of those charged with responsibility for the completion of these programs, the delays which have now occurred are only a foretaste of the increasingly greater delays to come if immediate resumption of work in the steel plants does not occur. The lag time to reach production, the further time required to transport the steel to the fabricator, and the delay occurring thereafter before delivery of the finished component creates a situation where the future scheduling of defense supplies is subject not only to existing but to future indeterminate delay.

. . . . . .

"Each day the strike continues will, in my opinion, add further examples of serious consequences to the shortages now existing and will adversely affect the national defense and imperil the national safety."

Secretary of Labor Mitchell stated that:

"* * * it is my opinion that this strike will, if permitted to continue, seriously imperil the National health and safety."

Deputy Administrator Dryden of the National Aeronautics and Space Administration, commented on the effect of the strike on the nation's space program.

"As the result of information which I have thus received, it is my opinion that the current strike affecting the steel industry has had an adverse effect on accomplishment of the presently planned program of space activities. This opinion is based upon the specific examples described * * *."

General Manager Luedecke, of the Atomic Energy Commission, referred to the effect of the strike on that agency's program.

"Continuity of operation of the Atomic Energy Commission's programs is essential to the national defense. The Commission or its contractors have had on hand or procured sufficient supplies so as not to have been materially affected by the steel strike in construction or repair projects, up till now. However, the strike has already produced delays, so far of a minor nature, in nine military or civilian projects located in California, New Mexico, Nevada, Ohio, New York, and Idaho; and should the strike continue unabated, it would induce a spreading slow-down in construction projects resulting in irretrievable delay. * * * If the strike continues into early 1960, there

would be an appreciable effect upon the weapons program."

We have examined carefully the contents of the affidavits submitted by the Union. Variances as they exist between these affidavits and those of the United States are created largely by different avenues of approach. We find no variances in the affidavits basically material to the findings made by the court below or to the issues with which we are immediately concerned.

On a review of the entire record we conclude that we cannot say that the findings made by the court below are clearly erroneous.

THE INJUNCTIVE REMEDY.

The Union argues that even if it be assumed that the findings of the court below are not clearly erroneous an injunction is far too sweeping a remedy for the ills which the court found will result from the continuance of the strike. It points out that the provisions of Section 178 (a) (ii), 29 U. S. C. A., merely gave to the court below "jurisdiction to enjoin". The United States contends that on the findings of the court below which we have approved the injunction must issue and that the case presented is so strong that a court of equity would be in error if it refused to give the relief prayed for. In short, the Union contends that the court below in granting the injunction abused its legal discretion and the United States asserts that if the court below had not granted the injunction the refusal would have been a breach of discretion.

A portion of the Union's argument in this regard is that there are other statutes which could have been employed by the United States adequately to relieve any danger to the national health or safety and which would have called for a much less drastic remedy than the injunction appealed from. This is a consideration which a court of equity of necessity must weigh.

The Union points out that Section 101(a) of the Defense Production Act of 1950 as amended, 50 U. S. C. A. App. § 2071(a) (Supp. 1958), authorizes the President:

> "* * * (1) to require that performance under contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and, for the purpose of assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance, and (2) to allocate materials and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense."

Additionally, Section 708, 50 U. S. C. A. App. § 2158, of the same Act authorizes the President:

> "* * * to consult with representatives of industry, business, financing, agriculture, labor, and other interests, with a view to encouraging the making by such persons with the approval by the President of voluntary agreements and programs to further the objectives of this Act."

The stated policy of the Act is "to provide for the national defense and national security". See 50 U. S. C. A. App. § 2062 (Supp. 1958).

Finally, the Union refers to Section 18 of the Universal Military Training and Service Act, 50 U. S. C. A. App. § 468, which provides:

> "Whenever the President after consultation with and receiving advice from the National Security Resources Board determines that it is in the interest of

the national security for the Government to obtain prompt delivery of any articles or materials the procurement of which has been authorized by the Congress exclusively for the use of the armed forces of the United States, or for the use of the Atomic Energy Commission, he is authorized, through the head of any Government agency, to place with any person operating a plant, mine, or other facility capable of producing such articles or materials an order for such quantity of such articles or materials as the President deems appropriate. Any person with whom an order is placed pursuant to the provisions of this section shall be advised that such order is placed pursuant to the provisions of this section . . .

"(c) In case any person with whom an order is placed pursuant to the provisions of subsection (a) [of this section] refuses or fails—

. . . . . .

"(2) to fill such order within the period of time prescribed by the President or as soon thereafter as possible as determined by the President;

. . . . . .

"the President is authorized to take immediate possession of any plant, mine, or other facility of such person and to operate it, through any Government agency, for the production of such articles or materials as may be required by the Government."

We cannot accept the Union's argument in this respect. If our conclusion is correct that there is sufficient evidence in the record of the present or future danger to national health or safety, we conclude that the danger is great enough and calls for a remedy as sweeping as the law will permit. Whether the remedy provided by the Labor-Management Relations Act is sufficient to accom-

plish a cessation of labor strife is a question not for this court but for Congress. We conclude, therefore, that the Court below did not abuse its discretion in granting the relief which the United States prayed for.

But there is another consideration here which is of vital consequence on the issue of the sound exercise of legal discretion by the court below. Section 179, 29 U. S. C. A., provides the machinery to be employed during the 80-day injunction period for the adjustment by the parties of their differences. This most important portion of the statute provides that it shall be "the duty of the parties to the labor dispute * * * to make every effort to adjust and settle their differences" with the assistance of the Service created by the Act. It further provides that upon the issuance of the injunction the President shall reconvene the Board of Inquiry which previously reported in respect to the labor dispute and at the end of a 60-day period, unless the dispute meanwhile has been settled, the Board of Inquiry shall report to the President the current position of the parties and the efforts which have been made to settle the dispute including a statement "of the employer's last offer of settlement". The President is required by law to make that report available to the public. Last, but by no means least important, Section 179 provides that the "National Labor Relations Board, within the succeeding 15 days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer", and that the National Labor Relations Board shall certify the results to the Attorney General of the United States within five days thereafter.

If the injunction does not issue the machinery designed by Congress to effect an end to the labor strife, which as we have indicated is one of the prime purposes for which the statute was enacted, cannot be employed, and

the menace to national health or safety, the other prime statutory purpose, perhaps cannot be abated. Congress has designed this machinery and has settled the policy embraced in the Labor-Management Relations Act. While the court below in the exercise of its sound legal discretion might have found that the exercise of the provisions of Sections 178 and 179, 29 U. S. C. A., would be ineffectual, rather than efficient, to quell labor strife and obviate the menace to national health or safety, in the light of all the circumstances we cannot say that in issuing the injunction the trial court abused its sound legal discretion. In this respect no judge or tribunal can foretell the future.

The judgment of the court below will be affirmed. Our stay order will be continued for a period of six days to allow aggrieved parties, should they desire to do so, to petition the Supreme Court for *certiorari*. Any further stay must come from the Supreme Court.

DISSENTING OPINION

HASTIE, *Circuit Judge*, dissenting.

Without challenging the conclusions of the majority as to the constitutionality of the statute and the sufficiency of proof that the continuing national steel strike imminently threatens serious interference with essential national defense production, I still am not persuaded that a case has been established for the issuance of a Taft-Hartley injunction.

These are the steps in my reasoning. The injunction sought here is an equitable remedy and, therefore, is to be granted or withheld in the exercise of a sound discretion. Accordingly it should not be granted if it apparently would not accomplish its objective. In the emergency strike provisions of the Taft-Hartley law, the primary purpose of a temporary injunction is not to force strikers

to return to work but to facilitate a settlement of a serious industry wide strike by collective bargaining. The evidence here shows that an injunction would not facilitate and might even make more difficult a negotiated settlement of the steel strike. In these circumstances an exercise of sound discretion must lead to a denial of the requested injunction. This reasoning is elaborated in what follows.

The national emergency strike provisions of the Taft Hartley Act, 29 U. S. C. §§ 176-180, do not purport to determine the merits of a labor dispute or to terminate a strike by judicial order. The statute merely authorizes a court temporarily to suspend a strike of a certain nationally very harmful type[1] for a period of not more than eighty days while the parties negotiate and the strikers ultimately vote whether to accept whatever final offer management may make. This duty to negotiate and vote is explicit and constitutes the whole machinery of settlement set up by the statute. Thus the apparent purpose of the statute is to create for a limited time a more favorable environment for collective bargaining between the parties to a nationally hurtful strike with the hope and expectation that bargaining and related procedures, outlined in Section 179 of Title 29, will accomplish a settlement of the strike.

It is true that a Taft-Hartley injunction may also have the immediately helpful effect of temporarily restoring much needed production. But if this had been the objective primarily in view there would have been no reason for limiting the term of the injunction to an eighty day period of attempted settlement. Reflecting his primary concern with achieving a negotiated settlement Senator Taft, the principal sponsor of the legislation, explained its philosophy to the Senate in these words:

[1] Presumably it is only when a strike imminently and seriously threatens very important national interests that an exception is made to the general policy of non-interference by federal courts in labor disputes.

"We did not feel that we should put into the law, as a part of the collective-bargaining machinery, an ultimate resort to compulsory arbitration, or to seizure, or to any other action. We feel that it would interfere with the whole process of collective bargaining." 93 Cong. Rec. 3951.

It is also to be considered in judging the primary purpose of the legislation that Congress had already conferred sweeping and more direct authority upon the Executive for satisfying emergency national needs for materials and commodities by seizing struck plants under Section 18 of the Universal Military Training and Service Act[2] and by allocating scarce supplies under Section 101 of the Defense Production Act of 1950 as amended.[3] It is reasonable to believe that some different purpose motivated the Congress in authorizing temporary injunctions under the Taft-Hartley law.

To accomplish its purpose the statute invokes the equity jurisdiction of the district courts. This is done by the provision that if the continuation of a strike of a substantial part of an industry will impair national health or safety, the district court "shall have jurisdiction to enjoin any such strike [for a period which cannot exceed eighty days] • • • and to make such other orders as may be appropriate". The case might have been different had the statute provided for an administrative hearing and determination and an administrative order suspending a strike, with the judicial role limited to enforcement of any permissible order. But Congress having chosen to refer the whole problem to a court of equity exercising its normal historic jurisdiction, the court must consider in the normal fashion of equity whether injunctive relief will

[2] This provision as it appears in 50 U. S. C. App. § 468 is quoted in the majority opinion at page 306.

[3] This provision as it appears in 50 U. S. C. App. § 2071 is quoted in the majority opinion at page 306.

serve its intended purpose. Equity refrains from issuing orders which appear vain in that they seem unlikely to serve their intended purpose.

To put the mattter somewhat differently, there is no legislative mandate that a court shall grant an injunction whenever a strike is imperiling national health or safety, though such peril is essential to jurisdiction. Rather, a court sitting in equity is called upon to balance all equitable considerations inherent in the statutory scheme or disclosed by the evidence in a given case. Under this analysis a primary and essential equitable consideration must be whether the underlying public purpose of the statute to promote and facilitate more effective bargaining would be served. Indeed, in my judgment some utility in accomplishing this primary purpose of the legislation should provide the principal equitable justification of injunctive relief.

Thus, a court, before issuing an injunction under Section 178 of Title 29, should satisfy itself that there is a reasonable basis for belief that a forced suspension of the strike will aid and accelerate the process of collective bargaining. In terms of the present case, has it been made to appear here that the parties are more likely to settle their dispute within the next eighty days if the strike is suspended for that period by court order than they are to accomplish this result while the strike continues?

Examining the pleadings and proof in the present record it appears that neither the government which seeks the injunction nor the steel companies whose employees are striking has shed any light on this critical question. Certainly there is no indication that violence or any other exacerbating conduct in the course of the strike is creating a climate harmful to negotiation. There is no suggestion that any tension or hostility inimical to negotiation would be relieved or any impediment to settle

ment removed by a suspension of the strike. There is simply nothing before us which warrants a conclusion that the objective of more productive bargaining would be served by an injunction.

On the other hand there is evidence to the contrary. The question is necessarily one of judgment informed by experience with the course of this strike and the history of other similar situations. The parties have elected to try this case on affidavits. The affidavit of David J. McDonald, President of the defendant union is relevant here. He has deposed as follows:

> "On the basis of the information available to me, I firmly believe that if the injunction which is anticipated by these companies should not be issued, a major stumbling block to the negotiation of a voluntary settlement of this dispute will be removed, and a settlement of the dispute will be achieved through the process of free collective bargaining. It is, of course, impossible to predict with certainty the time which will be required to reach such a settlement or what the terms of the settlement will be. I am certain, however, that the anticipation that the strike will be ended or interrupted by an injunction, has operated to remove the economic pressures which would otherwise be felt by both sides to reach a settlement, and that those pressures will operate to assure a settlement within a short period of time if the anticipation of an injunction is removed.
>
> "My firm belief that the anticipation of an injunction has, in fact, prevented a settlement from occurring to date is supported by the views expressed by such impartial experts as George W. Taylor, the Chairman of the Board of Inquiry appointed by the President in this dispute, and former Chairman of the National War Labor Board and the Wage Stabilization Board, Nathan P. Feinsinger and W. Wil

lard Wirtz, both former members of the National War Labor Board and both former Chairmen of the Wage Stabilization Board, in interviews published in the October 19, 1959, issue of U. S. News & World Report, and reproduced, in part, in Appendix B to this affidavit."

The above mentioned statement of George W. Taylor, Chairman of the Presidential Board of Inquiry for this strike and former Chairman of the National War Labor Board, upon this subject was published in question and answer form:

"Q. How do you feel about the Taft-Hartley machinery for handling big strikes?

"A. [Taylor] Everybody knows it's not adequate to handle those strikes. If the Taft-Hartley procedures are meaningful, they should serve the same function as a strike—that is, get people to modify their extreme positions. I don't think they have done that."

Also in the record is the statement of Nathan P. Feinsinger who has served on the National War Labor Board and the Wage Stabilization Board, and who was chairman of Presidential fact finding boards convened to inquire into the steel and meat packing strikes of 1946 and 1948. Speaking of the effect of Taft Hartley injunctions, Mr. Feinsinger said:

"A study of the records shows that, in some cases, the injunction has merely stiffened the resistance of the unions. There is a traditional resistance of labor to the injunction as a strike breaking device. I know of no case where an injunction, as such, cleared the atmosphere or expedited the settlement of a dispute."

It also merits mention, although the court below did not have this information, that the very day this case was argued to us both the President, who has invoked Taft-Hartley procedures in this case, and his Secretary of Labor issued public statements deprecating this procedure by injunction and expressing the view that it is not an effective aid in settling an industry wide strike. For the text of the President's statement, at his news conference of October 22nd, see *New York Times*, October 23, 1959, page 12.

In brief, the sources of information available to us indicate that there is real basis for apprehension that the granting of an injunction will remove existing and rapidly mounting economic pressure upon all parties to settle their differences quickly, and thus be hurtful to the statutory objective of promoting a strike settlement by bargaining. And this is not counterbalanced by any indication that an injunction will in any way advance the bargaining process. Yet, it is the burden of the government which seeks an injunction from a court of equity to show that this relief seems likely to serve its intended purpose.

In my view the only way to avoid the foregoing analysis and its result is to say that the statutory scheme makes it the duty of the court to grant an injunction to halt an industry wide strike on the petition of the government whenever it appears that the national safety or health is being jeopardized. That is a possible scheme. Perhaps it is a desirable scheme. But as I read the Taft-Hartley Act it is not the scheme of the statute. I think Congress undertook a limited intervention of government to aid collective bargaining, and, therefore, that a court should not act absent some showing that it will be aiding a negotiated settlement. That is a sufficient reason for denying injunctive relief here.

Finally, under the authority granted in Section 178 of Title 29, to issue "such other orders as may be appro-

priate", and guided in part by the manifest will of Congress that the court promote a negotiated settlement, I think it is within the equitable power of the district court, while refusing to enjoin the strike, to require the parties to follow such procedures as under the terms of the statute would be mandatory after an injunction. In this respect I disagree with the view of the majority that such procedures as the statute requires after an injunction are legally impossible without one. If they are reasonable ways of facilitating the settlement of the strike to which the court is addressing itself, I think the court in its discretion may require the parties to follow them without more. Indeed, we have already done as much by ordering that the parties proceed with collective bargaining while staying the order directing that they resume production. Particularly, I would have the district court order the parties to engage in continuing and persistent bargaining, to accept the assistance of the Federal Mediation and Conciliation Service and the Presidential Board of Inquiry and, if settlement should not result within sixty days, to permit the National Labor Relations Board to take a secret ballot of the employees of each employer involved on the acceptance or rejection of their employer's final offer of settlement. This much and no more is in my view an appropriate exercise of equitable judgment and discretion in the circumstances of this case.

[Caption Omitted]

JUDGMENT.

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed.

Attest:

IDA O. CRESKOFF,
Clerk.

October 27, 1959

OPINION OF THE COURT.

(Filed October 27, 1959)

PER CURIAM.

In accordance with the practice of this court the opinions in this case were circulated among the members of the court who did not comprise the panel in this case to determine whether they desired rehearing. Judge Kalodner excepted since he disqualified himself. Rehearing is ordered when a majority of the court so votes.

In view of the emergent circumstances of the case the members of the court who did not sit now express their views in respect to rehearing as follows. Judge McLaughlin and Judge Staley, because of the views expressed in Judge Hastie's opinion, vote for rehearing *en banc*. Judge Forman votes against rehearing *en banc* because of the views expressed in the majority opinion. Since the court is equally divided there will be no rehearing.

[Caption Omitted]

ORDER.

It is ORDERED that the stay order entered by this Court on October 22, 1959 be, and it is hereby continued to November 2, 1959 to allow the aggrieved parties, should they desire to do so, to petition the Supreme Court of the United States for a writ of certiorari.

Attest:

IDA O. CRESKOFF,
Clerk.

October 27, 1959

MEMORANDUM SUGGESTING A QUESTION OF MOOTNESS AS TO KAISER STEEL CORPORATION.

This is an appeal by the United Steel Workers of America from an injunction issued by the District Court for the Western District of Pennsylvania on October 21, 1959, directing the United Steelworkers of America and certain Defendant steel companies, including Kaiser Steel Corporation, immediately to resume operations at certain plants, which were then on strike. The injunction was issued under the procedure specified in Sections 206-210 of the Labor Management Relations Act of 1947, 29 USC §§ 176-180.

On October 26, 1959, the Defendant Kaiser Steel Corporation and the Defendant United Steelworkers of America entered into a collective bargaining agreement which is effective immediately. In pertinent part this agreement provides for the immediate resumption of work at all of the plants operated by the Kaiser Steel Corporation. The agreement further provides that there shall be no strikes, on the part of the United Steelworkers of America, or lock-outs, on the part of the Kaiser Steel Corporation, before June 30, 1961. Immediate measures

are being taken for the resumption of operations at the plants of the Kaiser Steel Corporation.

Since the injunction under review by this Court would require the resumption of activities at Kaiser Steel Corporation for a maximum period of 80 days, and since Kaiser Steel Corporation and the United Steelworkers of America have entered into an agreement which provides for the immediate resumption of activities for a period far beyond 80 days, it is respectfully suggested that this case is moot as to Defendant Kaiser Steel Corporation. E.g., *Brotherhood of Locomotive Firemen* v. *Toledo, P. & W. R. Co.*, 332 U. S. 748 (1947); *Stewart* v. *Southern Railroad Co.*, 315 U. S. 283, 784 (1942); *Retail Food Clerks* v. *Union Premier Food Stores, Inc.*, 308 U. S. 526 (1940). Therefore, it is respectfully submitted that this Court should enter an order vacating the judgment below as to Defendant Kaiser Steel Corporation and remanding with a direction to the District Court to dismiss the cause as to Kaiser Steel Corporation. *United States* v. *Munsingwear, Inc.*, 340 U. S. 36, 39 & 2 (1950).

Attached is a stipulation of counsel for the United States of America, the United Steel Workers of America and Kaiser Steel Corporation that the judgment be vacated and this cause be dismissed as to Kaiser Steel Corporation.

Respectfully submitted.

JOHN C. BANE,
Reed, Smith, Shaw & McClay
Pittsburgh, Pennsylvania

LLOYD N. CUTLER,
Cox, Langford, Stoddard & Cutler
Washington, D. C.
Attorneys for Defendant
Kaiser Steel Corporation.

STIPULATION.

Upon the attached memorandum suggesting a question of mootness as to Kaiser Steel Corporation, the undersigned hereby stipulate that the judgment be vacated, and this cause be dismissed, as to Kaiser Steel Corporation.

UNITED STATES OF AMERICA,
Plaintiff

By
GEO. COCHRAN DOUB

UNITED STEEL WORKERS OF AMERICA,
Defendant

By
ARTHUR J. GOLDBERG

KAISER STEEL CORPORATION,
Defendant

By
LLOYD N. CUTLER

Dated October 26, 1959

[Caption Omitted]

PER CURIAM.

It appearing from a stipulation filed herein on October 27, 1959, that the Kaiser Steel Corporation has concluded an agreement settling its labor dispute with United Steelworkers of America and it appearing therefore that any labor controversy between them has become moot, an order is entered concurrent with this opinion dismissing the instant proceedings as to Kaiser Steel Corporation.

[Caption Omitted]

It is ORDERED that the proceedings in the above-entitled matter as to Kaiser Steel Corporation be, and they are hereby dismissed.

Attest:

IDA O. CRESKOFF,
Clerk.

October 27, 1959

SUPREME COURT OF THE UNITED STATES

No. 504, October Term, 1959.

United Steelworkers of America,

Petitioner,

vs.

United States et al.

ER ALLOWING CERTIORARI. Filed October 30, 1959.

The petition herein for a writ of certiorari to United States Court of Appeals for the Third rcuit is granted and the case is assigned for oral gument on Tuesday, November 3, 1959, at 11:00 a. m. l briefs must be on file by noon, Monday, November 1959. The injunction issued by the United States strict Court for the Western District of Pennsylnia on October 21, 1959, as modified by the United tates Court of Appeals for the Third Circuit on ctober 22, 1959, is stayed pending the issuance of the judgment of this Court.

And it is further ordered that the duly certified opy of the transcript of the proceedings below which ccompanied the petition shall be treated as though iled in response to such writ.

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

UNITED STEELWORKERS OF AMERICA,

Petitioner

v.

UNITED STATES OF AMERICA, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

ARTHUR J. GOLDBERG
DAVID E. FELLER
ELLIOT BREDHOFF
JERRY D. ANKER
1001 Connecticut Avenue, N. W.
Washington 6, D. C.
BERNARD DUNAU
912 Dupont Circle Building, N. W.
Washington 6, D. C.
Attorneys for Petitioner
United Steelworkers of America

TABLE OF CONTENTS

	Page
OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	3
STATUTE INVOLVED	3
STATEMENT OF THE CASE	5
REASONS FOR GRANTING THE WRIT	12
CONCLUSION	28

TABLE OF CITATIONS

Cases

Balaban & Katz Corp. v. Commissioner of Internal Revenue, 30 F. 2d 807, 808 (C.A. 7)	20
Federal Radio Commission v. General Electric Co., 281 U.S. 464	28
Federal Radio Commission v. Nelson Brothers Co., 289 U.S. 266, 275-277	28
Hecht Co. v. Bowles, 321 U.S. 321, 329-330	23
Muskrat v. United States, 219 U.S. 346, 357	25
National Mutual Insurance Co. v. Tidewater Transfer Co., 337 U.S. 582, 600	25
Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 227	25

Statutes and Regulations

Defense Production Act of 1950, 50 U.S.C. App. § 2071	21
Labor Management Relations Act, 29 U.S.C. § 141 (b)	9
21 Fed. Reg. 5484 (July 21, 1956)	22

Others

H. Conf. Rep. No. 510, 80th Cong., 1st Sess.	14
Legislative History of the Labor-Management Relations Act, 1947 (Govt. Print. Off., 1948)	14
Frankfurter and Greene, The Labor Injunction (1930)	28

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No.

UNITED STEELWORKERS OF AMERICA

Petitioner

v.

United States of America, Acme Steel Company, Acme-Newport Steel Company, Allegheny-Ludlum Steel Corporation, Wallingford Steel Co., Armco Steel Corporation, Armco Drainage and Metal Products, Inc., National Supply Company, Southwest Steel Products, The Babcock & Wilcox Co., Bethlehem Steel Company, Bethlehem Cornwall Corporation, The Dundalk Company, Buffalo Tank Corporation, Bethlehem Limestone Company, Bethlehem Transportation Corporation, Colorado Fuel and Iron Company, Crucible Steel Company of America, Donner-Hanna Coke Corporation, Great Lakes Steel Corporation, The Hanna Furnace Corporation, Stran-Steel Corporation, National Steel Products Corporation, Inland Steel Company, Interlake Iron Corporation, Jones & Laughlin Steel Corporation, Union Dock Company, Lukens Steel, McLouth Steel Corporation, Moltrup Steel Products Co., Northwestern Steel & Wire Co., Pittsburgh Steel Company, Pittsburgh Tube Co., H. K. Porter Co., Inc., Republic Steel Corporation, Air Vue Products Co., John A. Roebling's Sons Corporation, Sharon Steel Corporation, Shenango Furnace Company, Superior Drawn Steel Company, United States Steel Corporation, Columbia Iron Mining Company, Wheeling Steel Corporation, The Youngstown Sheet and Tube Company, Judson Steel Corporation, H. H. Robertson Company, Joseph T. Ryerson and Son, Inc., Valley Mould and Iron Corporation Wyckoff Steel Company, Ashtabula and Buffalo Dock Company, Boland and Cornelius, International Harvester Company, Cleveland Cliffs Iron Company, Mesabi Cliffs Mining Company, Humboldt Mining Company, Negaunee Mine Company, Marquette Iron Mining Company, Coons Pacific Company, Lerch Brothers, Inc., M. A. Hanna Company,

Hanna Iron Ore Division of National Steel Corporation, Hanna Ore Mining Company, Hanna Mining Company, Morton Ore Company, Butler Brothers, Douglas Mining Company, Ozark Ore Company, Montreal Mining Company, W. S. Moore Company, North Range Mining Company, Pickands Mather and Company, The Balkan Mining Company, Bennett Mining Company, Crete Mining Company, Cuyuna Ore Company, Erie Mining Company, Hoyt Mining Company, Lake Mining Company, Mahoning Ore & Steel Company, Odanah Iron Company, Puritan Mining Company, The Verona Mining Company, The Youngstown Mines Corporation, Western Mining Company, The Sunday Lake Iron Company, The Mesabe Mining Company, Pioneer Mining Company, Pittsburgh Pacific Company, Reserve Mining Company, St. James Mining Company, Skubic Brothers Company, Susquehanna Ore Company, Zenith Mining Company, Snyder Mining Company, Oglebay Norton Company

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above entitled case on October 27, 1959.

OPINIONS BELOW

The District Court for the Western District of Pennsylvania issued only findings of fact and conclusions of law, which appear in the Record at pp. 244-48. The opinion of the Court of Appeals, which appears in the Record at pp. 286-310, is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on October 27, 1959. This Court has jurisdiction to review the judgment herein by writ of certiorari under 28 U.S.C. §1254(1) and

Section 208(c) of the Labor Management Relations Act, 29 U.S.C. §178(c).

QUESTIONS PRESENTED

1. Whether, within the meaning of Section 208(a)(ii), Title II, Labor Management Relations Act, 1947, detriment to economic well-being is comprehended within the statutory term "national health or safety."

2. Whether, within the meaning of Section 208(a), Title II, Labor Management Relations Act, 1947, peril to the "national . . . safety" which emanates from a shutdown of an insubstantial part of an industry suffices to confer jurisdiction upon the District Court to enjoin a strike of the entire industry.

3. (a) Whether the courts below applied the proper standard of proof for a finding that continuance of the steel strike will imperil the national health and safety.

(b) Whether, on any standards, the findings of the courts below can be sustained.

4. (a) Whether under the terms of Section 208(a), Title II, Labor Management Relations Act, 1947, the District Court has equitable discretion to determine whether to grant or deny an injunction;

(b) Whether the Court of Appeals can sustain the issuance of the injunction as an allowable exercise of discretion when the District Court exercised no discretion;

(c) Whether, assuming that the District Court did exercise its discretion, its action in enjoining this strike constituted an abuse of that discretion.

5. Whether the functions conferred upon the District Court by Section 208(a), Title II, Labor Management Relations Act, 1947, call for the exercise of nonjudicial powers in contravention of Article III, Section 2, of the United States Constitution or the doctrine of separation of powers.

STATUTE INVOLVED

Sections 206-210 of the Labor Management Relations Act of 1947, 29 U.S.C. §§ 176-180, 61 Stat. 155, provide, in part, as follows:

SEC. 206. Whenever in the opinion of the President of the United

States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

* * * *

SEC. 208. (a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

(b) In any case, the provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", shall not be applicable.

(c) The order or orders of the court shall be subject to review by the appropriate United States court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

SEC. 209. (a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperil or threaten to

imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

SEC. 210. Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

STATEMENT OF THE CASE

The petitioner, United Steelworkers of America, one of the defendants below, is a labor organization which is the certified or recognized collective bargaining representative of some or all of the nonsupervisory employees of each of the other named defendants in this case. These defendants are employers who operate mines, plants, ships, and other facilities relating to the production and fabrication of steel, and represent a substantial part

but not all—of an industry engaged in commerce, and the production of goods for commerce, among the several states and with foreign nations.

Prior to June 30, 1959, there were in effect between the Union and the employer defendants as well as almost all other employers in the industry—collective bargaining agreements prescribing wages, hours, and other terms and conditions of employment, which agreements, by their terms, were to expire on June 30. (R. 12)

Early in May, negotiations for new agreements began between the representatives of the Union and representatives of twelve of the largest employers. It is traditional in the steel industry for the smaller employers to follow the "pattern" established by collective bargaining between the Union and the industry leaders. (R. 12)

As the June 30th deadline approached, there was no prospect of an immediate agreement, and the parties, at the request of the President of the United States, agreed to extend the old agreement for two weeks. (R. 12) At the end of that period there was still no settlement, and a strike began. Negotiations, with only short interruptions, have continued during the strike, and even during the course of this litigation.

A summary of the negotiations up to October 19 and the issues in dispute between the parties appears in the Report to the President of the Board of Inquiry, at pp. 11-33 of the record, and in the statement of President David J. McDonald to that Board, which is attached to Mr. McDonald's affidavit in this case and is part of the record herein. (R. 42-51)

In the opinion of Mr. McDonald, which appears in his sworn affidavit and which is uncontradicted in the record, the industry has steadfastly refused to settle the dispute on any reasonable terms because it anticipated the use by the Government of the Taft-Hartley emergency procedures to break the strike. (R. 40-41)

On October 9, 1959, the President of the United States took the first step under the Taft-Hartley emergency procedures. He issued Executive Order 10843 (R. 9), appointing a Board of Inquiry, pursuant to Section 206 of the Labor Management Relations Act. In this order, the President expressed the "opinion"—which, under the statute, he must do before acting under the

emergency provisions that the strike, if permitted to continue, would imperil the national health and safety. On October 14, the President, in Executive Order 10848 (R. 11), extended to October 19 the date upon which the Board was to report to him.

The Board submitted its report (R. 11-33) on the date it was due. This report, in accordance with the statute, dealt only with the collective bargaining issues in dispute between the parties. It made no finding or recommendation concerning the presence or absence of a threat to the national health or safety.

On receiving the report, the President directed the Attorney General to petition any district court having jurisdiction of the parties to enjoin the continuance of the strike and to order such other relief as might be necessary or appropriate. (R. 8)

On October 20 the present action was filed in the United States District Court for the Western District of Pennsylvania. (R. 1) By stipulation, all defendants waived service of process and submitted to the jurisdiction of the Court. They also stipulated that the case be determined on the basis of affidavits rather than oral testimony, and that it be submitted to the court upon final hearing. (R. 34)

At the trial, the following basic facts were found or undisputed. The strike had shut down approximately 85 percent of the steel producing capacity of the United States. (R. 244) The remaining 15 percent was still operating, either under extension agreements between the Union and the employers involved, or, in a few instances, because the employees involved are not organized or are represented by some other union (R. 98-102). Subsequent to the trial of this case, one of the struck companies who was a defendant below, Kaiser Steel Corporation, signed an agreement with the Union, settling the strike at that company. Consequently, an additional 2 percent of the steel industry is now operating, and 83 percent is presently affected by the strike. By stipulation, the proceedings as to Kaiser Steel Corporation have been ordered to be dismissed. (R. 322)

Steel production prior to the strike was abnormally high in anticipation of the strike, and for the first nine months of 1959 total production was approximately 72.4 million ingot tons, as compared with a total of 85.2 million tons for the entire year 1958. (R. 103)

A large part of the Government's case was based on the allegation that the strike was affecting the economic well-being of the nation. The evidence with respect to this issue showed that as of the time of the hearing, unemployment attributable to the strike was 265,000, not counting strikers, (R. 246) and that total unemployment was slightly in excess of 3 million (R. 108). It was found by the district court that if the strike were to continue through the balance of 1959—another 2½ months—strike-caused unemployment (apparently including strikers) would reach 3 million. (R. 246) Thus, assuming that finding to be correct, unemployment would be increased by approximately 2¼ million if the strike were to continue through December. In 1958, without any major strike, unemployment reached a peak of 5.4 million. (R. 108) There is no finding, and no evidence on the record which would support a finding, that the strike would last through December if the injunction were denied. But even if the strike should last that long, the findings indicate that the economy would not be affected as seriously as it was affected by the 1958 recession.

A considerable amount of evidence was presented concerning the effect of the strike on the national defense program. It was undisputed, however, that the total amount of steel consumed for defense purposes during the 18 months prior to the strike was never more than 1.2 percent of total production—which, in terms of tonnage, is approximately 5 percent of the capacity still in operation despite the strike. (R. 91) The court found that despite the fact that steel was still being produced at a rate many times as great as the rate at which the defense program consumes steel, certain steel products needed in connection with some aspects of the defense program were nevertheless presently unavailable because of the steel strike. (R. 246-47) The Union contended below and will contend in this Court that this finding was not supported by the evidence, but even if the finding be accepted as true, it means only that a very tiny fraction of the plants now on strike are necessary for the defense program.

On these facts, the District Court made the conclusory finding that the strike imperiled the national health and safety, (R. 247) and issued an injunction. (R. 249-50) The court rejected the union's argument that the statute is unconstitutional because it authorizes the court to issue an injunction which does not enforce

a pre-existing legal obligation, but merely creates such an obligation. The court did not pass on the Union's further argument that it should, in the exercise of its equitable discretion, refuse to issue an injunction in this case.

The union promptly filed an appeal (R. 251) and moved the district court for a brief stay to enable the Union to apply to Judge Staley of the Court of Appeals for the Third Circuit for a stay pending appeal. This was granted. (R. 253) Shortly thereafter, Judge Staley, on motion by the Union, granted a stay until 10 A.M. the following morning, or, if the union had by that time filed a motion before the Circuit Court, until further order of the Court. (R. 266)

On October 22, at 10 A.M., the parties appeared before the Third Circuit Court of Appeals in Philadelphia, on the Union's application for a further stay (R. 267) and application for advancement of consideration of the appeal (R. 278). Chief Judge Biggs, and Judges Goodrich and Hastie comprised the court. At the suggestion of the court and with the agreement of the parties the appeal was heard on the merits at that time. The court continued the stay in effect, except as to paragraph 5 of the injunction, which directs the parties to bargain collectively and to attempt to settle their differences. (R. 282)

On October 27, the Court of Appeals issued a decision affirming the judgment of the district court, Judge Hastie dissenting. At the same time it issued a *per curiam* opinion (R. 318) which set forth the views of the other members of the court with respect to rehearing. Judges McLaughlin and Staley voted for rehearing. Judge Forman voted against. Judge Kalodner disqualified himself. The result was an equally divided court and no rehearing. On its own motion, the court continued the stay in effect until November 2, to permit aggrieved parties to petition for certiorari. (R. 318)

The opinion of the Court of Appeals began with a consideration of the constitutionality of the statute. Referring to the statement of purposes in section 1(b) of the Labor Management Relations Act, 29 U.S.C. § 141(b), the court concluded that one of the purposes of the act was "to bring an end to industrial strife which affects commerce to such a degree as to menace the general welfare." (R. 292) Thus, the court said, it is "tortious" to permit "a labor dispute to continue to the point where national health

or safety is imperiled." (R. 292) The national emergency injunction, the court reasoned, is simply the method provided by the statute for remedying the "tort."

The court apparently relied as well on a somewhat different theory to sustain the constitutionality of these provisions. These sections, the court held, have to a limited extent revived the old "labor injunction" which the Norris-LaGuardia Act had destroyed. While the court considered such an injunction, compelling employees to return to work, a form of "status judgment," it held that the entry of such a judgment is within the constitutional power of an Article III court, just as the review of administrative decisions is part of the judicial power. (R. 295)

Finally, the court held that the determination which the statute requires a court to make before issuing an injunction is "specific enough and factual enough to bring the inquiry within the area of judicial decision as distinguished from legislative judgment." (R. 296)

The court then turned to the findings of fact made by the district court. It rejected the Union's argument that to justify the injunction the peril to the national health and safety must be present or imminent, stating that "the words of the Section speak to the future, *viz.*: 'If [the strike is] permitted * * * to continue [it] will imperil the national health or safety.'" (R. 300)

Relying on the affidavit of Dr. Raymond Saulnier, the court concluded that the effect of the strike on the defense program could not be remedied by opening a few plants, because the "steel industry is too vast and too complicated to be segmented so as to make such a desirable result practicable." (R. 300)

The court concluded that the affidavits submitted by the Government adequately supported the findings of the court below. Since the Government's witnesses were all cabinet officers or department heads, the court held that they were qualified to testify as experts and that their testimony was entitled to be weighed "in a different light from that of a witness who testifies that a motor car was or was not on a portion of the highway where it did not lawfully belong." (R. 301)

The difference between the affidavits submitted by the Union and those introduced by the Government, said the court, was largely a difference as to "avenues of approach. We find no variances in

the affidavits basically material to the findings made by the court below or to the issues with which we are immediately concerned." (R. 306)

Finally, the majority opinion considered the Union's argument that the injunction should have been refused in the exercise of equitable discretion, in order to facilitate a prompt settlement of the labor dispute in the public interest. The court conceded that a court of equity "of necessity must weigh" the fact that less drastic remedies were available to the Government, but held that "the danger is great enough and calls for a remedy as sweeping as the law will permit." (R. 308) Further, the court stated that one of the purposes of the emergency procedures is to set in motion certain administrative machinery—the Board of Inquiry, the last-offer ballot, etc.—designed to help settle the dispute, and that this machinery would not be available without the injunction. The court seemed to say that it would have affirmed a decision withholding the injunction as a matter of discretion, but that "we cannot say that in issuing the injunction the trial court abused its sound legal discretion." (R. 310)

Judge Hastie dissented. In his view, the primary purpose of the Taft-Hartley injunction "is not to force strikers to return to work but to facilitate a settlement of a serious industry-wide strike by collective bargaining," (R. 310-11) and that in this case, at least, the injunction would make a settlement more difficult. He therefore concluded that the district court should have denied the injunction as a matter of sound discretion.

In Judge Hastie's opinion, the Government had other adequate statutory powers to assure the continued production of goods needed for defense, with or without a strike, and that "it is reasonable to believe that some different purpose motivated the Congress in authorizing temporary injunctions under the Taft-Hartley law." (R. 312)

Neither the Government nor the industry had "shed any light on this critical question" of whether an injunction would help or hinder a settlement, said Judge Hastie. "There is no suggestion that any tension or hostility would be relieved or any impediment to settlement removed by a suspension of the strike." (R. 313-14) The only evidence is the affidavit of David J. McDonald, and the attached public statements of George W. Taylor, Nathan P. Fein-

singer, and W. Willard Wirtz, all of which tended to prove that a settlement could be negotiated if the injunction were denied.

Judge Hastie disagreed with the majority's view that an injunction against the strike was necessary to put the administrative machinery contemplated by the emergency provisions into operation. He interpreted the statute as permitting the court to order the parties to follow the procedures provided in the statute without at the same time terminating the strike. He pointed out that the court had, in effect, done so when it permitted paragraph 5 of the injunction to take effect while staying the other parts of the order. "This much and no more," he concluded, is "an appropriate exercise of equitable judgment and discretion in the circumstances of this case." (R. 317).

REASONS FOR GRANTING THE WRIT

1. This case presents important questions of federal law which have not been, but should be, decided by this Court. The provision of Sections 206-210 of Title II of the Labor Management Relations Act, 1947, provide an extraordinary remedy which has been administered without guidance from this Court for 12 years. The scope of the District Courts' powers and discretion under the Act, the nature of the proof required to support the finding as to peril to the national health or safety which the District Court is required to make, the kinds of disputes which the Act may properly be said to cover, and the constitutional validity of the entire scheme are questions of utmost gravity. They are potentially present in every case in which those sections are involved. This Court, for that reason alone, should grant certiorari here so that all concerned—unions, employers and the Government—may be able to rely upon an authoritative interpretation of the statute.

2. For reasons to be more fully set forth below we believe that this case presents these issues in particularly critical form. The public importance of the steel strike requires no elaboration. The merits of the underlying dispute are, of course, not of judicial concern. But governmental intercession in the dispute, unauthorized by the statute, unsupported by proper proof and presented without proper regard for the discretionary powers of the District Court is a matter of the utmost judicial concern. And the invocation of a remedy which is of doubtful constitutionality in a dispute

of this magnitude requires, we believe, authoritative disposition by this Court.

3. Acquisition of jurisdiction by the District Court in this case was based upon two determinations made by it: (a) "national health" will be imperiled because the steel strike will idle workers and facilities dependent upon steel (R. 245-246, 247); (b) "national safety" will be imperiled because the shortage of certain steels affects the progress of certain defense activities (R. 246-247). Each determination raises serious questions as to the proper reach and interpretation of the statute. We deal first with "health."

The District Court here concluded that "The national health will be imperiled if the strike is permitted to continue" (R. 247). This conclusion rests exclusively upon its subsidiary prediction that (*ibid.*):

> A continuation of the strike will have the ultimate effect of adversely affecting millions of small business enterprises, almost all of which are directly or indirectly dependent upon steel products and most of which lack the resources to stock large inventories. In addition, it will have the effect of idling millions of workers and a large proportion of the facilities in industries dependent upon steel for their continued operation. Manufacturing industries directly dependent on steel mill products account for the employment of approximately 6,000,000 workers and normal annual wages and salaries totalling approximately $34,000,000,000. The products of these industries are valued at over $125,000,000,000. The national health will be imperiled if the strike is permitted to continue.

This conclusion is obviously unrelated to "health" in the conventional sense of food shortages, impairment of hospital or medical care, lack of heating and sanitation, or the like. Nor is there anything in the record which bears at all on physical health. And it is singularly revealing that there is no affidavit from the Secretary of Health, Education and Welfare.

The conception of health embraced by the District Court, and undisturbed by the Court of Appeals, is rooted instead in the view that the statutory term "health" embraces economic well-being.

This is explicit in the opinion expressed by the President and in the affidavits of his subordinates. In convening a Board of Inquiry the President stated that "if production is not quickly resumed, severe effects upon the economy will endanger the *economic* health of the nation" (R. 10, emphasis supplied). The Secretary of Labor expressed his opinion that the "*economic* health of the nation is being endangered" (R. 173, emphasis supplied), and the Administrator of the Small Business Administration was similarly of the view that "the strike will seriously endanger the *economic* health of the nation . . ." (R. 184, emphasis supplied).

To expand the concept of "health" from physical to economic well-being departs from the ordinary meaning of the word. And it is demonstrable that Congress used the word in its conventional sense.

The Senate bill, as reported and passed, was confined to peril to the "national health or safety."[1] The House bill, as reported and passed, extended to peril to "the public health, safety, *or interest*." The Senate version prevailed in conference.[3] The rejection of the view that the statute should extend to national "interest" is emphasized by the colloquy on the floor of the House between Congressmen Kennedy and Owens (93 Cong. Rec. 3513, in 1 Leg. Hist. 669):

> "MR. KENNEDY. I believe that this country should certainly be in a position to combat a strike that affects the health and safety of the people. Therefore, I feel that the President must have the power to step in and stop those strikes. I am not in the position of opposing everything in this bill, but there are certain things in the bill that are wrong. I do not see how the President is going to have the power to stop strikes that will affect the health and safety of the people under the procedure listed in section 203. I think he must have that power.

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[1] 1 *Leg. Hist.* 146, 148, 274, 276. "Leg. Hist." refers to the two-volume edition of the *Legislative History of the Labor-Management Relations Act, 1947* (Govt. Print. Off., 1948).

[2] 1 *Leg Hist.* 87, 88, 214, 215 (emphasis supplied).

[3] H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 64, in 1 *Leg. Hist.* 568.

"I agree with you that any bill providing for an injunction should carefully consider the position of the striking union and make sure that their rights are protected. I think that in those cases Federal seizure until the dispute is settled would perhaps equalize the burden in the fairest possible manner.

"MR. OWENS. Will not the gentleman admit that we have a third word in there? It is 'interest.' Could we not better use the word 'welfare' instead of 'interest,' because the word 'welfare' occurs in the Constitution? It is just as broad as the word 'interest' and more practical.

"MR. KENNEDY. The proposal embraces two separate things, health and safety. Because the remedy is drastic these two, in my opinion, are sufficient. I believe we should apply this remedy when the strike affects health or safety, but not the welfare and interest, which may mean anything. I would not interfere in an automobile strike, because while perhaps that affects national interest, it does not affect health and safety.

"MR. OWENS. Does not the gentleman agree that 'welfare' is the stronger and in line with the President's idea?

"MR. KENNEDY. No. Both 'welfare' and 'interest' are too indefinite. They could cover anything. I would not have the law apply except in cases where the strike affected health and safety."

To expand the scope of the statute to include economic well-being is thus to interpolate into it the rejected word "interest." This is an entirely new conception. As the Government stated on argument below, "in all of the fourteen prior cases under Taft-Hartley, the Government proceeded on the single-barrel basis of the effects upon critical items needed for defense. In this case we are proceeding also on the other basis, the effect on the national economy, as well" Transcript of oral argument in the Court of Appeals, p. 104.

4. The second determination made by the District Court related to the national safety. We do not, of course, contest the proposition that defense needs are pertinent to a determination of peril to national safety. This case, however, presents a serious question as to whether a peril to national safety, assuming for the moment that one was properly proved to exist here (see par. 5 below), which arises from a shutdown of a tiny fraction of an industry suffices to confer jurisdiction upon a District Court to enjoin a strike in the

entire industry; whether, in other words, a danger created by a strike of 5,000 employees empowers a District Court to require 500,000 to return to work.

It is uncontroverted in the record that 63 steel mills throughout the country are still in operation, unaffected by the strike, and account for 15.36 percent of the total steelmaking capacity in the United States (R. 99-102). To this should be added the two percent steelmaking capacity of the plant of the Kaiser Steel Corporation which has been reactivated as a result of the settlement reached between the Union and the Company. It is also uncontroverted that steel requirements for all defense purposes constitute a minute fraction of steel produced. Thus, in no quarter since 1958 have mill shipments for defense purposes exceeded 1.2 percent of total mill shipments; for the entire year and a half ending mid-1959, shipments for defense purposes accounted for less than one percent of total shipments (R. 91). This quantity is less than five percent of the productive capacity of the steel mills currently in operation; in the aggregate, the current level of steel output is some twenty times as large as defense requirements. (*ibid.*)

The District Court found that "Certain items of steel required in top priority military missile programs are not made by any mill now operating, nor available from any inventory or from imports" (R. 246). This finding repeats in so many words the unparticularized statement in the affidavit of the Secretary of Commerce (R. 162). Neither that affidavit, nor any other, specifies the type or quantity of such steel, the closed plants at which they are produced, or the number of such plants which would have to be reactivated to fill the need. Industry and governmental sources, of which this Court may take judicial notice, show that virtually every type of specialty steel necessary for defense purposes is or can be produced by nonstruck mills, and that the nonstruck mills, although accounting for 15.36 percent of total steelmaking capacity, actually account for 35.04 percent of electric steel furnace capacity. Almost all high quality alloy steels — which are the special steels required for defense purposes — can be made in electrical steel furnaces now operating. In the case of the highly vital vacuum melted steels (see R. 196), 20 of 23 companies utilizing this process are not on strike.[4]

[4] The supporting data will be included in the brief on the merits if certiorari is granted.

But even if specialty steel requirements for defense cannot be fully met from nonstruck mill capacity, the unavailable quantity is exceedingly small. The total steel requirements of all kinds for defense purposes do not exceed 1.2 percent (R. 91). Specialized steel requirements must constitute a fraction of that 1.2 percent. And the fraction of that fraction which cannot be supplied by the plants now working must be minute indeed. We cannot know how minute because the Government has not informed the Court, or the parties, what kinds of steel it lacks, how much of it, or what plants make it.

It is this central and indisputable fact which exposes the fundamental statutory misconception upon which the finding of the court below of peril to national safety rests. For, assuming the adequacy of the finding of peril to the national safety, missing is the indispensable companion finding or basis for one that this peril is the consequence of the shutdown of a substantial part of the industry. To acquire jurisdiction to issue an injunction, Section 208(a) requires that the District Court make two findings, namely, that the "threatened or actual strike or lock-out" (1) "affects an entire industry or a substantial part thereof" *and* (2) "if permitted to occur or to continue, will imperil the national health or safety." Unquestionably the steel strike affects a substantial part of the industry. But it is not continuance of the strike in a substantial part of the industry which imperils safety. At most, it is only continuance of it in that handful of mills necessary to produce specialized steel that can be said to do so. By no latitude of interpretation can that handful be described as a "substantial part" of an industry comprised of 310 steel plants on strike (R. 172), and 63 nonstruck steel companies (R. 99-102), themselves operating several hundred hot rolling mills (R. 123). This is not a single dispute but a great number of disputes in which there are some common issues.[5] Unlike the Coal Industry, there are in Steel separate collective bargaining agreements and separate collective bargaining units equal in number at least to the number of employer defendants in this case. Nothing except the companies' insistence prevents individual companies from separately settling their disputes with the Union — as some have done. It is unthinkable, therefore, that where the

[5] For some of the differences, see R. 17, 21, 23.

peril, if there be any, emanates from the disputes at an insignificant number of these companies, the statute empowers the District Court to bring to a standstill the strike in the whole of the industry. Congress did not arm the District Court with an elephant gun to bring down a gnat.

The Court of Appeals does not meet this argument directly but makes certain statements which are relevant to it. It relied upon the affidavit of Dr. Raymond J. Saulnier, Chairman of the Council of Economic Advisers, to support the view that "a selective reopening of a small number of mills to meet national defense needs" is not practicable (R. 300-302).

Dr. Saulnier makes three points. First, he quotes from the Business and Defense Services Administration that "to satisfy defense requirements" "it would be necessary to reactivate 25 to 30 hot rolling mills together with supporting" facilities, and this "would be totally impracticable" (R. 196). However, a single integrated plant can and often does comprise 25 to 30 hot rolling mills and supporting facilities. This is essentially the situation with respect to the reactivated Kaiser plant, and there was nothing impractical about reopening it.

The only impracticality identified by the Business and Defense Services Administration is that it would not be feasible to reopen the plant "to meet only defense requirements . . ." (R. 196). But there is nothing to say that the plant could not be opened for all purposes—civilian and defense production. Surely it is not less practical to reopen one plant for all purposes rather than to reopen all 310 plants for all purposes, when the sole justification for reopening any struck plant is a minute amount of specialty steel needed for defense purposes. The statement of Robert R. Nathan in his affidavit stands quite unrefuted that specialty steel for defense "could certainly be produced in a very small number of mills which might be re-opened to assure the availability of such special items" (R. 92).

The second point that Dr. Saulnier makes, relied upon by the Court of Appeals (R. 301), is that "Obtaining adequate supplies of . . . essential civilian items of steel, like obtaining steel for defense purposes, would clearly require the opening of more than just a few mills" (R. 197). But the record does not establish any shortage of "Essential civilian items of steel." Quite to the contrary (R. 69-91). This consideration is therefore irrelevant.

The last point made by Dr. Saulnier, relied upon by the Court of Appeals (R. 300-301), is that "Even if it were technically possible to resume steel production on this selective basis, to do so would be exceedingly uneconomic and wasteful," and "would be offensive to the public conscience, as well as to the public interest" (R. 197). We have shown that there is nothing uneconomic or wasteful in reopening one or a few plants for all purposes, and nothing which precludes it. This aside, what is truly "offensive to the public conscience, as well as to the public interest," is to force over 500,000 workers to return to work against their will, and to set at nought the immense sacrifices they underwent in exercising their right to strike. Especially is this so when all that is in the balance on the other side is presumed waste and inefficiency.

It is thus clear that any peril or defense (if peril there be) arises from a shortage of certain specialty steels (if shortages there be) producible in a handful of struck mills (if indeed it cannot all be acquired from mills now in operation). All danger to defense arises at best from a shutdown of a few mills and can be averted by reopening these mills. This situation fails to meet the statutory test for vesting the District Court with jurisdiction, namely, that a shutdown of a *substantial* part of an industry imperils safety. The District Court acquires no jurisdiction to enjoin a strike in the whole of an industry because of danger which emanates from the shutdown of an insubstantial part of it.

5. All of the determinations made by the District Court with reference to health and safety rest, to a greater or lesser degree, upon evidence which is conclusory in nature and unsupported by a sufficient particularization of subsidiary data necessary to justify or even evaluate the conclusion. Whether a District Court should be permitted to take the drastic action of terminating a strike of 500,000 employees upon evidence of this nature constitutes a serious and important question. This is particularly true where, as here, the case is heard upon final hearing and the Government undertakes to prove by a preponderance of the evidence that the statutory requirements are met.

We do not urge that opinion evidence is inadmissable in this kind of a proceeding. But "opinion evidence, to be of any value, should be based upon admitted facts or upon facts within the knowledge of the witness, disclosed in the record. Opinion evidence that does

not appear to be based upon disclosed facts is of little or no value." *Balaban & Katz Corp.* v. *Commissioner of Internal Revenue*, 30 F. 2d 807, 808 (C.A. 7).

We will not, in this petition, although we will do so if certiorari is granted, examine in detail the findings of the District Court and the evidence upon which they were based. It is sufficient to state here that the evidence was of three general kinds. The first was simply the statement by a Government official that the steel strike has created a peril to national health or safety (R. 167, 171, 173, 184, 188). Obviously such a bald conclusion, without more, is plainly insufficient. The second kind of evidence was a statement by a Government official that the steel strike or a delay in the resumption of steel production would result in damage to the national defense, or the missile program, etc. (R. 161-167.) This constitutes a slight advance, but not much. Neither the court nor the parties are placed in any position to evaluate the nature or extent of the damage, or the remedy necessary to correct or prevent it, let alone to judge whether the opinion is soundly based. Finally, in two affidavits only, reference is made to a particular kind of project which has been affected by the steel strike. Those two are the affidavits of the Acting Secretary of Defense (R. 168) and of the Deputy Administrator of the National Aeronautics and Space Administration (R. 174). But, even here, there are no particulars as to the nature of the steel which cannot be obtained, the reasons why it cannot be obtained from mills now operating, or indeed as to what relation the unspecified part of the project, which is affected by a shortage of an unspecified kind of steel, has to the military weapon itself. And there is no specification, finally, of the relationship of the delay claimed to result from the strike to the entire construction schedule.

There is not, in this entire record, one piece of straightforward and precise evidence which says "Steel of Type XYZ (or plates so many inches wide, etc.) is necessary for the production of a named missile (or a submarine, etc.) and is not available because of the steel strike."

Without going into the detail which shows quite graphically the failure of the Government to prove in any acceptable manner the existence of a peril to the national safety resulting from the steel strike we think that it is quite clear that a serious question is pre-

sented here as to the kind and quality of proof which should be required by a District Court before it takes the drastic step of enjoining a strike affecting the lives and welfare of 500,000 workers.

This question is accentuated in this case by the uncontroverted fact that the Government itself has not regarded the needs of national defense to be sufficiently serious to invoke the powers which it has to assure itself of an adequate supply of steel for defense purposes from existing inventory and from productive capacity of nonstruck mills. The Defense Production Act of 1950 empowers the President or his delegate to establish priorities and allocate materials needed for defense.[9] The Government through the Business and Defense Services Administration, its agency for this purpose, has not yet utilized its full power under this statute. On July 20 and 28, within two weeks after the beginning of the strike, the BDSA simply announced through two releases that it had taken certain steps to keep itself informed of the steel situation, that it had formally reminded the nonstruck companies of their responsibilities under the law, and that additional steps would be considered if the strike continued (R. 108, 109-110). The BDSA did nothing further until October 16, one week after the President convened the Board of

[9] Section 101 (a) and (b) of that Act, 50 U.S.C. App. §2071, provide that:

"(a) The President is authorized (1) to require that performance under contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and, for the purpose of assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance, and (2) to allocate materials and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense.

"(b) The powers granted in this section shall not be used to control the general distribution of any material in the civilian market unless the President finds (1) that such material is a scarce and critical material essential to the national defense, and (2) that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship.

Inquiry. On that date the BDSA issued an order accelerating the delivery of steel for defense purposes by struck companies upon resumption of operations and by nonstruck companies immediately (R. 166; BDSA Order M-1A). To this date, however, the BDSA has not "frozen" any type of steel, either in inventory or to be produced by nonstruck mills, by requiring that it be devoted exclusively to defense needs. In contrast, in the 1956 steel strike, the BDSA on July 20, 1956, on the twentieth day of the strike, issued an order prohibiting shipments against unrated (nonessential) orders of all types of aircraft-quality steel, nickel-bearing steel plate over 72 inches wide, or nickel-bearing stainless steel plate over ½ inch thick. 21 Fed. Reg. 5484 (July 21, 1956). The failure of the Government to yet use its full power in the current situation is eloquent testimony of the lack of any genuine shortage of steel to meet defense needs.

6. The question of whether a District Court, whose jurisdiction is invoked under Section 208 of the Act, has discretion as to whether it shall issue an injunction if the statutory jurisdictional prerequisites are met has never been authoritatively determined. In this case the union urged strongly upon the District Court, both orally (R. 131) and in its memorandum, that the court had discretionary powers and that it should exercise them in favor of refusing the injunction order requested by the Government. The Government, in its brief to the District Court, simply ignored the question and assumed that if the statutory requirements were met an injunction against the strike should issue as a matter of course.[10] There was no further briefing in the Court of Appeals. In the oral argument there the union again urged that the District Court had discretion. Counsel for the Government first argued that an injunction against the strike was mandatory and, then under questioning by the Court, agreed that the Government's position might be said to be that the discretion which is ordinarily present "was squeezed out, so to speak." (Transcript of Argument, pp. 94-97.)

We think it plain that the statute should be read as vesting discretion in the District Court, not only to determine whether an injunction should issue but also to determine whether the injunction

[10] Both the union's memorandum and the government's brief are in the original record which has been forwarded to this court by the Court of Appeals for the Third Circuit. They were, however, omitted from the printed record by stipulation of counsel.

should run against the whole strike, and all of the strikers, or against just that small percentage of the struck mills which alone create the peril to health or safety. Our views on this question are confirmed by the statutory language, which does not direct the Court to issue an injunction but only grants jurisdiction to the Court to do so, and which specifically gives the Court power "to make such other orders as may be appropriate." See *Hecht* v. *Boules*, 321 U. S. 321, 329-330.

We believe further that the District Court plainly erred in not exercising its discretion. That it did not do so is clear from the record. The transcript of the proceedings before the District Court on October 21 (R. 220-244) is devoid of the slightest suggestion that the court recognized that it had any discretion in the premises. In his brief oral statement (R. 239) the District Judge stated simply that he would sign findings of fact and conclusions of law meeting the statutory requirements and that he would therefore issue an injunction. The court overruled the proposed conclusion of law submitted by the union that the court had discretion (R. 215). The findings and conclusions adopted by the court contained no reference to any equitable considerations other than the absence of an adequate remedy at law and simply concluded that the Government was entitled to the relief prayed for because of the findings as to safety and health. The injunction order itself is totally silent on the reasons for its issuance. Plainly, therefore, and in the light of the requirement of Rule 65 (d) that the reasons for granting an injunction be set forth by the court issuing it, it must be concluded that the District Court simply assumed that the injunctive remedy was mandatory.

All the members of the Court of Appeals agreed that the District Court, under the statute, had discretionary powers, although they disagreed as to the consequences of their agreement.

This raises a further question. Chief Judge Biggs, for the majority, concluded that "we cannot say that in issuing an injunction the trial court abused its sound legal discretion." (R. 310). Judge Hastie, to the contrary, based his dissent, at least in part, on the view that the District Court's action was impermissible as a matter of equity. Passing, for the moment, the question on which they disagreed, there is a serious question, we believe, as to whether an injunction

entered without consideration of relevant equitable considerations can be sustained on appeal.

It simply cannot be said, as Chief Judge Biggs did, that the court below might properly have decided either way "in the exercise of its sound legal discretion" (R. 310) and that, therefore, there was no reversible abuse of discretion. For the court below exercised no discretion.

For reasons which we summarize briefly below there were presented to the District Court several alternative courses of action. The choice as to these alternatives was properly to be made by the District Court, not only on the bare face of the record before it but also by examination and discussion with the parties and their counsel. The failure of the District Court even to inquire into the matters properly bearing on the exercise of his discretion is emphasized by the statement of counsel for the union to the court that it was the policy of the Union to cooperate with the Government in obtaining any steel necessary for national defense, and the proof on that issue submitted by the union. (R. 150-151)

If we assume that the Court of Appeals properly could reach the equitable questions involved herein despite the failure of the trial court to consider them, we believe that a serious question is presented as to whether that court was correct in its conclusion that a proper balancing of the equities here would support the action taken by the trial court. In addition to the reasons set forth by Judge Hastie in dissent, which we rely upon, we rely also on several additional considerations.

First, of course, is the presence of the additional and untried remedies available to the government to meet any peril to the safety or health of the nation which may be caused by the strike. They are set forth in Chief Judge Biggs' opinion. (R. 307-308) We think it was plain error not to consider the availability of these remedies in determining whether, as a matter of sound legal discretion, an injunction should have been issued here.

The second point we urge is that, if an injunction should be issued, that injunction should be limited to the selective reopening of a few plants which would meet any conceivable defense needs for steel. The view of the Court of Appeals that this was impractical was clearly erroneous, as we have shown above. The error of the courts below is emphasized by the evidence in the record and

the representations made to the District Court and, in quite specific terms to the Court of Appeals, by counsel that the union had never turned down any request made by the government to provide needed material for defense.[11] A discriminating exercise of judicial power here would have met any conceivable peril to the national defense, and, at the same time, would have preserved the values which Congress plainly wanted to preserve by limiting its interference with free collective bargaining to the minimum extent made necessary by the overriding requirements of national safety or health.

Finally, the majority below, in their consideration of the equities, seemed to have been mainly influenced by the view that only if an injunction were issued could the administrative machinery provided in Section 209 be employed. But, as Judge Hastie pointed out, an injunction against the strike as such is not necessary to activate these procedures (R. 316-317). An injunction in the terms of paragraph 5 of the order entered by the District Court (R. 250) would suffice. Even if an injunction against a strike is necessary, one requiring selective reopening of the plants would clearly constitute an adequate statutory trigger. There was, therefore, even on the reasoning of the majority of the court below, no equitable basis for issuing an injunction against 500,000 strikers.

7. The function of the courts established by Article III of the Constitution is "the judicial function of adjudicating justiciable controversies." *National Mutual Insurance Co.* v. *Tidewater Transfer Co.*, 337 U. S. 582, 600. "A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist." Mr. Justice Holmes in *Prentis* v. *Atlantic Coast Line Co.*, 211 U. S. 210, 227. "By cases and controversies are intended the claims of litigants brought before the courts . . . for the protection or enforcement of rights, or the prevention, redress or punishment of wrongs." *Muskrat* v. *United States*, 219 U. S. 346, 357.

The functions vested in the District Court by Sections 208 and 210 of the Act are outside these bounds of judicial power. The District Court does not enforce a pre-existing duty, for there is no duty until the court declares it, and Congress intended to create none. It

[11] Transcript of Oral Argument before the Court of Appeals, page 24.

is the act of the District Court in issuing the injunction which Congress intended should both create and enforce the obligation to cease striking for eighty days. There is no standard of conduct to which a union can conform to avoid an injunction.

Voluntary cessation or deferment of a strike for eighty days or longer avails nothing. And necessarily so under the scheme of the statute. For the court order is the premise for the exercise of administrative functions. The parties are, upon its issuance, obligated to bargain "with the assistance of the [Federal Mediation and Conciliation] Service" (Sec. 209(a)). The Board of Inquiry is reconvened, and if the strike is not settled at the end of sixty days, the Board is required to "report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement of the employer's last offer of settlement." Within the next fifteen days the NLRB conducts a ballot among the employees to ascertain whether they wish to accept the last offer. The results are certified to the Attorney General, who then moves the court to discharge the injunction, "which motion shall then be granted. . . ." The final step is the President's report to Congress with his recommendation for its "consideration and appropriate action."

Thus the District Court issues an injunction which can last, at most, for 80 days, which is based on no violation of any pre-existing duty, and which is the foundation of an exclusively administrative process designed to settle a labor dispute and culminating in a report to Congress. The nonjudicial nature of this function finds its necessary consequence in the determinations which the District Court is called upon to make: (1) The court is required to decide whether a strike "will imperil the national health or safety" if it is not enjoined. While a finding of fact in form, this requires a determination beyond judicial competence, for it requires judgment and understanding wholly beyond the professional capacity of a judge. He is either required to echo uncritically the opinions of the executive officers whose affidavits are produced by the Government (as the court did here) or to inject himself into an area in which there are no judicial guides for decision. In addition, it necessarily involves a prophecy as to the probable outcome of negotiations if an injunction fails to issue, a judgment wholly unlike those normally required of a judge. (2) In exercising his discretion as to whether or not to

issue an injunction, or on what terms, the District Court acts as an economist, for any genuine exercise of discretion requires economic evaluation and prognosis. Indeed, since men cannot be required to return to work without some determination of the terms of their employment, the District Court to a substantial degree is involved, as the court here already is (R. 236, 237, 250), in prescribing wages, hours, and working conditions and settling the collective bargaining contentions of the parties. (3) The final anomaly is inherent in any proceeding which is both designed to deal with "emergencies" and to terminate in 80 days. Congress has attempted to use the ordinary forms of judicial procedure to deal with the kind of accelerated and temporary proceeding for which they are not suited. Ordinary judicial procedures simply cannot cope, and remain judicial, with the problems of proof and review presented when an injunction is used, not as a judicial remedy to correct wrongs or preserve rights, but as an integral but temporary part of an administrative process designed to settle a labor dispute.

The decision below does not meet the issues. It first states that continuance of a strike, when it reaches the stage of peril to national health or safety, is a tort which the Government rectifies as *parens patriae* (R. 290-294). This is plainly erroneous. If it were truly a tort, a union would have an obligation to refrain from striking without awaiting the imposition of a sanction; the sanction would simply vindicate the default in the performance of a pre-existing duty. Yet, under this statute, a union has no duty before the injunction issues to discontinue the strike and Congress intended to create none; the union commits no wrong when it continues a strike, regardless of its impact on national health and safety, if the injunctive procedures of Section 208 are not invoked; and the union is free, and intended to be free, to strike when the 80-day period of the injunction expires.

The decision below next states that the injunction prescribed by the statute simply restores, to a limited degree, the labor injunction as it existed before the Norris-LaGuardia Act, and the labor injunction was historically a "status" judgment (R. 294-295). This too is wrong. However egregious the labor injunction has been, it always purported to rectify wrongs and violations of pre-existing rights. It enjoined violence, breach of contract, or tortious interference with advantageous relationships. It rested on rights con-

ferred by statute or common law. It did not declare status not existing before the declaration was made.[12]

The decision below finally states that the function of the District Court is no different from judicial enforcement of agency orders like those of the National Labor Relations Board, Securities and Exchange Commission, or Interstate Commerce Commission. (R. 295). But the functions of courts in relation to such agencies is the traditional judicial role of keeping the agency within the bounds of its legal authority and of assuring that it neither confers nor denies statutory rights or privileges by means which depart from the statute. *Federal Radio Commission* v. *Nelson Brothers Co.*, 289 U. S. 266, 275-77. But the moment the court itself engages in functions like rate making or licensing it exercises administrative or legislative powers denied a constitutional court. *Federal Radio Commission* v. *General Electric Co.*, 281 U. S. 464. The function of judicial review of agency action is hardly like that imposed upon a District Court under this statute, which is invested with no authority to review anybody's action, but is required to make the first, and only finding, on the issues which Congress has thrust upon it.

Whether Congress properly can, under the Constitution, put the federal district courts in this kind of a business presents, we believe, a serious question which should be reviewed by this court.

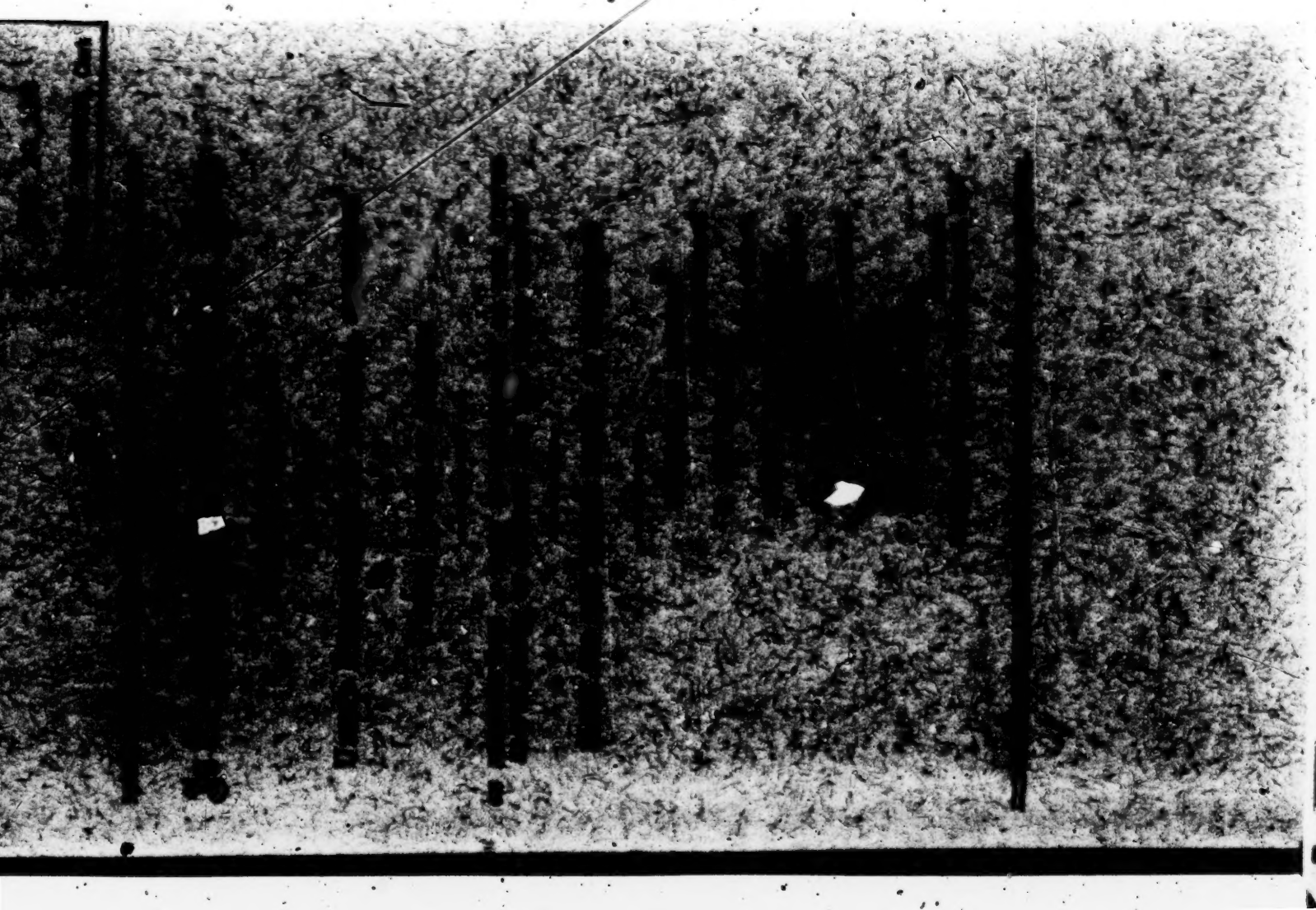
CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for certiorari should be granted.

ARTHUR J. GOLDBERG
DAVID E. FELLER
ELLIOT BREDHOFF
JERRY D. ANKER
1001 Connecticut Avenue, N. W.
Washington 6, D. C.
BERNARD DUNAU
912 Dupont Circle Building, N. W.
Washington 6, D. C.
Attorneys for Petitioner
United Steelworkers of America

October 30, 1959.

[12] See Frankfurter and Greene, The Labor Injunction (1930) 89-90.



INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	1
Statute involved	2
Statement	2
1. The nature of the litigation	3
a. The background	3
b. The District Court proceedings	5
2. The affidavits	6
a. The Government affidavits	7
(1) The steel industry and the strike	7
(2) The effect of the strike on the nation's defense	9
(3) The effect of the strike on the nation's economy	14
b. The union affidavits	17
c. Dr. Saulnier's affidavit	20
3. The findings of the District Court	23
4. The decision of the Court of Appeals	25
Argument	27
I. Section 208 of the Labor Management Relations Act of 1947 is constitutional	28
II. The concurrent findings of the courts below that continuance of the steel strike "will imperil the national health and safety" are fully supported	41
A. The national safety is imperiled by the direct effect of the strike in obstructing and delaying essential defense projects	43
B. The national health and safety is imperiled through the effect of the strike on the economy at large	46
III. To enjoin a strike imperiling the national health and safety the court is not required to find that the injunction will facilitate settlement of the labor dispute	52

Page

Conclusion 58
Appendix A 59
Appendix B 94

CITATIONS

Cases:

Aetna Life Ins. Co. v. *Haworth*, 300 U.S. 227 31
Chapman v. *Maren Elwood College*, 225 F. 2d 230 39
Chicago & G. T. Ry. v. *Wellman*, 143 U.S. 339 31
Chicago & Southern Air Lines v. *Waterman S.S. Corp.*, 333 U.S. 103 ..... 31, 39
Colegrove v. *Green*, 328 U.S. 549 30
Coleman v. *Miller*, 307 U.S. 433 30
Continental Grain Co. v. *Dant & Russell*, 118 F. 2d 967 40
Debs, In re, 158 U.S. 564 ..... 28, 37
Douds v. *Local 1250, Retail Wholesale Dept. Store Union*, 170 F. 2d 695 37
Frothingham v. *Mellon*, 262 U.S. 447 30
Georgetown v. *Alexandria Bridge Co.*, 12 Pet. 91 37
Goldhill Trading & Ship Co. v. *Caribbean Ship Co.*, 56 F. Supp. 31 40
Gordon v. *United States*, 117 U.S. 697 ..... 31, 39
Hayburn's Case, 2 Dall. 409 ..... 31, 39
Interstate Commerce Commission v. *Brimson*, 154 U.S. 447 ..... 37, 39
Joint Anti-Fascist Refugee Committee v. *McGrath*, 341 U.S. 123 30
Kohl v. *United States*, 91 U.S. 367 35
Lord v. *Veazie*, 8 How. 250 31
Marine Transit Corp. v. *Dreyfus*, 284 U.S. 263 40
Muskrat v. *United States*, 219 U.S. 346 31
Nixon v. *Herndon*, 273 U.S. 536 30
Pennsylvania v. *The Wheeling &c. Bridge Co.*, 13 How. 518 37
Pierce v. *Society of Sisters*, 268 U.S. 510 30
Pope v. *United States*, 323 U.S. 1 39
Premier-Pabst Sales Corp. v. *Grosscup*, 298 U.S. 226 30
Red Cross Line v. *Atlantic Fruit Company*, 264 U.S. 109 40
Sanitary District v. *United States*, 266 U.S. 405 37
Siebold, Ex parte, 100 U.S. 371 ..... 30, 38

Cases—Continued Page
Swift & Co. v. *Hocking Valley Ry. Co.*, 243 U.S. 281 31
Tennessee Electric Power Co. v. *T.V.A.*, 306 U.S. 118 30
Tileston v. *Ullman*, 318 U.S. 44 30
Truax v. *Raich*, 239 U.S. 33 30
Tutun v. *United States*, 270 U.S. 568 30, 32, 33–34
Ullmann v. *United States*, 350 U.S. 422 36, 37
United States v. *Ferreira*, 13 How. 40 31, 39
United States v. *Johnson*, 319 U.S. 302 31
United States v. *Jones*, 119 U.S. 477 31
United States v. *Mine Workers*, 330 U.S. 258 29
United States v. *Swift & Co.*, 286 U.S. 106 40
United States v. *United Steel Workers of America*, 202 F. 2d 132, certiorari denied before judgment, 344 U.S. 915 28
Virginian Ry. v. *System Federation*, 300 U.S. 515 40
Willing v. *Chicago Auditorium Association*, 277 U.S. 274 31
Youngstown Co. v. *Sawyer*, 343 U.S. 579 29

Constitution and Statutes:
Constitution of the United States:
Article III, § 2 6, 28
Fifth Amendment 36
Act of June 30, 1952, 66 Stat. 305, 50 U.S.C. App. 2123 45
Defense Production Act of 1950, 64 Stat. 798, 50 U.S.C. App. 2061 45
Title V, Sec. 503, 50 U.S.C. 2123 45
Labor Management Relations Act of 1947, 61 Stat. 136, *et seq.*, as amended, 29 U.S.C. 176–180:
Sec. 1(b) 38, 55
Sec. 206 2, 4, 55, 94
Sec. 207 2, 94
Sec. 208 2, 5, 31, 32, 36, 38, 39, 43, 48, 51, 56, 95
Sec. 209 2, 96
Sec. 210 2, 96
National Labor Relations Act, Sec. 10(l), 29 U.S.C. 160 37
Norris-LaGuardia Act, 47 Stat. 70, 29 U.S.C. 101–115 29

Miscellaneous:
96 Cong. Rec. 11630, 11750, 12175, 12905–6, 14073 45
98 Cong. Rec. 6598, 6600, 6601–4, 6613, 6615, 6616 (Senate debate); 8023–8050 (House debate) 45

Miscellaneous—Continued

	Page
Executive Order No. 10843	4
Executive Order No. 10848	4
H.R. 3020, 80th Cong., 1st Sess., Sec. 203(a)	47, 48
H. Conf. Rep. No. 510, 80th Cong., 1st Sess	55
Legislative History of the Labor Management Relations Act, 1947 (G.P.O. 1948), pp. 586-587, 669, 868, 882, 905, 913, 926, 1008, 1145, 1496, 1518, 1523	57
S. Rep. No. 105, 80th Cong., 1st Sess	29, 48, 57
S. Rep. No. 2250, 81st Cong., 2d Sess	45

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 504

UNITED STEELWORKERS OF AMERICA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinions in the Court of Appeals for the Third Circuit (App. A, *infra*, pp. 59–93) are not yet reported. The Findings of Fact and Conclusions of Law entered by the District Court for the Western District of Pennsylvania appear at R. 244–248.

JURISDICTION

The judgment of the Court of Appeals was entered on October 27, 1959. The petition for a writ of certiorari was filed on October 30, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether Section 208 of the Labor Management Relations Act of 1947, providing for injunctive relief

against continuation of a national strike imperiling the national health and safety, is valid under Article III of the Constitution.

2. Whether the concurrent findings of both courts below that continuation of the current nation-wide steel strike will imperil the national health and safety are correct on this record.

3. Whether Section 208 of the Labor Management Relations Act of 1947 authorizes a court to refuse to enjoin a national strike imperiling the national health and safety because of the absence of evidence sufficient to satisfy the court that the injunction will facilitate collective bargaining.

STATUTE INVOLVED

Sections 206–210 of the Labor Management Relations Act of 1947, 61 Stat. 136, 155, as amended, 29 U.S.C. 176–180, are set forth in Appendix B, *infra*, pp. 94–97.

STATEMENT

This suit was brought by the United States, under § 208 of the Labor Management Relations Act of 1947, 61 Stat. 155, 29 U.S.C. 178, to enjoin the continuation of the nation-wide steel strike. On October 21, 1959, the District Court for the Western District of Pennsylvania entered an order enjoining the strike until further order of the court, and directing the defendant union (the United Steelworkers of America) and the defendant steel companies to continue attempts to resolve their labor disputes by collective bargaining during the period of the injunction (R. 249–250).

The district court declined to stay the effectiveness of its injunctive order, but an interim stay was granted by Circuit Judge Staley to allow the union's request for a stay pending appeal to be considered by a full panel of the court of appeals on the following day (R. 253, 266–267). When the stay application came on for hearing, the appeal was, by agreement of counsel, argued and submitted on the merits (R. 280–281). The court continued the interim stay pending its decision (R. 282).

On October 27, 1959, the court of appeals affirmed the injunction, Judge Hastie dissenting (App. A, *infra*, pp. 60–93). By an equally divided court (Judge Kalodner not participating), the Third Circuit refused a rehearing *en banc* (App. A, *infra*, p. 59).

1. THE NATURE OF THE LITIGATION

A. THE BACKGROUND

On July 15, 1959, after the union and the steel companies had failed, following extended negotiations, to agree to the terms of new collective bargaining agreements, the union commenced a strike which has been in effect, without interruption, since that time. The union represents employees in the various productive facilities of the defendant companies involved in the different stages of steel production, *i.e.*, the mining and transport of iron ore by railroads or vessels, the operation of blast furnaces for the conversion of iron ore into pig iron, the production of steel ingots, the rolling and shaping of steel ingots into various shapes and forms of steel products, and the fabrication of certain finished products. The facili-

ties closed down because of the disputes and resultant strike constituted 85 per cent of the nation's steel production capacity.

On October 9, 1959, some three months after commencement of the strike, the President of the United States issued Executive Order No. 10843 (R. 9–10) whereby, pursuant to the provisions of § 206 of the Act, he appointed a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him. In the Executive Order, the President expressed the opinion that the strike, if permitted to continue, will imperil the national health and safety. In a statement explaining his issuance of the Executive Order, the President pointed to the "shutting off" of practically all new supplies of steel, the unemployment of hundreds of thousands of employees in steel and related industries, and the imminent threat to the economic health of the nation if production was not quickly resumed (R. 10).

On October 19, 1959,[1] the board of inquiry made its written report to the President (R. 11–33). Limiting its findings, under § 206, to a description of the facts of the dispute and of the parties' respective positions, the board concluded that "we see no prospects for an early cessation of the strike. The Board cannot point to any single issue of any consequence whatsoever upon which the parties are in agreement" (R. 28).

Upon receipt of the board's report, the President directed the Attorney General, in accordance with

[1] The board was originally directed to make its report on October 16, 1959, but the time was extended until October 19 by Executive Order No. 10848 (R. 11).

§ 208 of the Act, to petition the appropriate district court to enjoin continuance of the strike. In his communication to the Attorney General, the President reiterated his belief that the strike, if permitted to continue, would imperil the national health and safety (R. 8–9).

B. THE DISTRICT COURT PROCEEDINGS

On October 20, 1959, the Attorney General filed a petition in the United States District Court for the Western District of Pennsylvania, seeking an injunction against the union and the steel companies pursuant to § 208 of the Act (R. 1–7). The petition, describing the requisite statutory steps which had been taken by the President, alleged that prolongation of the widespread strike in the steel industry will imperil the health and safety of the country. In summary form, the petition briefly averred some of the already profound consequences of the strike on employment, both in the steel industry and many other areas of the economy, on the availability of essential steel products, and on vital national defense projects. It pointed to the acceleration of adverse effects which would inevitably result from a continuance of the strike.

In response, the union[2] denied that the strike, if permitted to continue, would imperil the national health and safety. In addition, the union, challenging the constitutionality of § 208, asserted that the Government's petition did not present a case or contro-

[2] The union was the only defendant to file a responsive pleading or to introduce evidence. The defendant steel companies waived this right (R. 34).

versy within the meaning of Article III, § 2, of the Constitution of the United States. Finally, the union pleaded that, even if the district court had jurisdiction, general principles of equity required that the relief sought by the Government be denied (R. 35–37).

2. THE AFFIDAVITS

All the evidence in the case consisted of affidavits filed by the Government (R. 161–200) and by the defendant union (R. 39–123) pursuant to stipulation (R. 34). The nine affidavits submitted by the Government represented the views of various cabinet officers and Government officials concerning the serious effects of the strike in those defense and non-defense areas over which they had authority and were kept informed. While the union filed seven affidavits, only four—those of Robert R. Nathan, Leon Keyserling, Meyer Bernstein and one of Otis Brubaker's—went to the issue of danger to the national health and safety, the other three being concerned solely with the labor disputes between the companies and union[4] and the retroactivity issue.[1] One of the nine Government affidavits, that of Raymond J. Saulnier, Chairman of the Council of Economic Ad-

[1] The union's answer also sought to have any injunction which might be issued provide that any new collective bargaining agreements entered into by the parties defendant should include a retroactivity provision. That issue is not involved here.

[4] The affidavit of David J. McDonald, President of the United Steelworkers of America (R. 39–66).

[5] The affidavit of I. W. Abel, Secretary-Treasurer of the United Steelworkers of America (R. 67–68), and one of the two affidavits submitted by Otis Brubaker, Research Director of the union (R. 117–122).

visors, was, in essence, a rebuttal affidavit to that of Mr. Nathan, and for this reason, will be described below after the other eight Government and the four union affidavits.

A. THE GOVERNMENT AFFIDAVITS

(1) *The steel industry and the strike*

The affidavits of Secretary of Commerce Frederick H. Mueller (R. 161–167) and Secretary of Labor James P. Mitchell (R. 172–173) described, in some detail, the vast, widely distributed, complex of productive operations making up the steel industry. Secretary Mueller noted that steel production encompasses production of iron ore, pig iron, steel ingots, and fabricated products and that the defendant steel companies own and operate, *inter alia*, steel mills, iron ore mines, coal mines, ore boats, limestone quarries, fabricating plants, and shipbuilding companies. The industry also produces valuable by-products that constitute raw materials for other basic industries, such as the coal, chemical, and cement industries (R. 161).

Both Secretaries Mueller and Mitchell observed that annual consumption of steel is far greater than that of all other metals combined (R. 161, 172). Annual steel consumption was estimated by Secretary Mueller to be 20 per cent in the construction and related industries, 25 per cent in the production of transportation equipment, 10 per cent in the manufacture of machinery and industrial, commercial and scientific equipment of various kinds, 10 per cent in

the manufacture of containers such as those used for food and medicines, 5 per cent in the manufacture of household appliances and furniture, 5 per cent in agriculture and the extractive industries including mining, oil and gas drilling, and lumbering, and the remaining 25 per cent in a variety of ways, including the production of ordnance and for military uses other than those in the other categories (R. 161–162).

Secretary Mueller's affidavit stated that the strike had paralyzed some 85 per cent of this vast and vital productive capacity (R. 163). It had resulted in the shutdown of 310 steel plants, 118 iron ore mines, and 11 transport facilities located in 32 states and extending across the nation (R. 172). As noted by Secretary Mitchell, by October 14, 1959, an estimated 780,000 workers were unemployed, including the 500,000 steel workers on strike, as a direct result of the strike (R. 172). Moreover, Secretary Mueller observed that each succeeding day of the strike accelerated and made more widespread the paralyzing effect on the nation's economy (R. 164–166). In the words of the union president himself, "[t]his strike has continued for longer than any other strike in this industry. In terms of loss of pay and of work, this is the largest strike which has ever occurred in the U.S.A." (R. 56).

The effect of the strike on available steel supplies, taking into account domestic plants still operating and imports of steel, was described in detailed fashion by Secretary Mueller. In terms of the gross quantities of steel available, he pointed out that inventories had been reduced from the abnormally high level of 24.8

million tons at the beginning of the strike to the dangerously low level of 10 million tons by October 15 (R. 164). Since inventories are currently declining at the rate of 5 million tons a month, he concluded that the inventories are thus "approaching the exhaustion point" (R. 164). Of the six plants still operating with capacities in excess of a million tons a year, moreover, he noted that one (with a capacity of 1.9 million tons) was owned by, and being operated for the sole purpose of supplying, the Ford Motor Company (R. 164). Imports of steel, he observed, had amounted to only the relatively small amount of 2.7 million tons for the entire first 8 months of the year and were wholly inadequate to serve the needs of the economy.

Because of time-lags in production and subsequent processing of steel, there would still be serious shortages, Secretary Mueller added, even if the mills were reopened immediately. Some four weeks would be required before the mills themselves could achieve full production,* and additional time would be required before the pipelines through the other stages of manufacture could be filled (R. 165). Another limiting factor would be the supply of iron ore, for, as the Secretary observed, even if the transportation of lake

*The maximum output that could be anticipated after the mills are reopened, including the full capacity of the currently operating mills, was estimated by Secretary Mueller to be (R. 165):

	Percent of capacity
First week	45
Second week	60
Third week	85
Fourth week	90

ores had been resumed on October 20, stockpiles would be down to some 10 million tons by May 1, 1960 (compared to 47.9 and 36.5 million tons on the same dates in 1958 and 1959), less than one month's supply (R. 165).

Secretary Mueller emphasized, moreover, that gross tonnage was an inadequate measure of the seriousness of the shortages, because of the great variety of shapes, forms, and analyses of steel required for the many different uses of steel. Even flat rolled steel products are produced in thousands of sizes, both in width and in thickness, and there are many different analyses in the three basic groups of carbon steel, alloy steel, and stainless steel—*e.g.*, there are 35 different types of stainless steel alone. Some producers make a wide range of sizes but not of shapes or analyses, while others make a range of analyses but not of forms, with the result that the shortages of particular kinds of steel are much more severe than the gross shortages would indicate (R. 162). This factor limits reliance even on the small quantity of imports now available, since imports are limited to a relatively few shapes and sizes (R. 164). It likewise makes the gross inventories misleading, since "many manufacturers are rapidly approaching the point at which they will be unable to utilize their remaining inventories of steel because of lack of balance of individual shapes and kinds, each of which is needed to maintain a production operation" (R. 165).

Secretary Mueller noted, finally, that steel is required not only to meet growth requirements of the

economy but to maintain the existing stock of structures and equipment intact—*e.g.*, replacement accounts for 60% of the steel used for railroad rolling stock and for rails and related articles; 40% of the steel used for residential construction; 50% of the steel used for industrial plant and equipment; and 30% of the steel used for household appliances (R. 163). And some of the more important uses of steel (*e.g.*, containers for food and drugs) depend entirely on current production (R. 163).

(2) *The effect of the strike on the nation's defense.*

The Government affidavits showed that the strike has already had serious consequences for the nation's many programs of national defense, including top-priority missile and satellite projects, and that the point had been reached where each day of further delay in shipments would cause irretrievable delays in proceeding with these programs. Acting Secretary of Defense Thomas S. Gates, Jr., speaking of the defense programs of all the armed services and basing his statement on information from officials in each service, stated that any further delays in normal steel shipments would result in "irreparable injury to the national defense and consequently to the national safety" (R. 168). Acting Secretary Gates noted that defense considerations did not end at our shores but involved commitments to overseas allies and organizations which were also suffering from the delays (R. 168, 163). Moreover, as was indicated for all areas of the economy, even if continuance of the strike terminated immediately, there would be a serious time-

lag before anything like normal production and delivery could be attained (R. 170).

As examples of defense projects detrimentally affected, Acting Secretary Gates pointed to the top priority programs involving ballistic missiles (ATLAS, TITAN, and POLARIS), where the steel products used were of a unique design and not available from existing inventories, from the production of plants still in operation, nor from steel imports (R. 168–171).[7]

[7] The ATLAS missile, for example, requires a specially processed stainless steel, and the delay in the delivery of that steel has reached a point at which "for every further day of delay a similar extension of the presently programmed delivery dates will be required" (R. 169). There is a similar shortage of the special steel required for pressure vessels used to transport fuel for the missiles (R. 169). Shortages of specialized structural shapes of steel has resulted in an anticipated delay of two or three months in the construction of four major launching sites for the ATLAS and TITAN missiles, and each day's further delay will cause additional delays. Production of the POLARIS weapon system has been halted at two plants for lack of various gauges of alloy sheet steel and plates and halts at four more plants are expected in a few days (R. 170). Construction of nuclear submarines to launch the POLARIS missile has also been delayed, as has production of various supporting elements of the system, such as a special transmitting facility and launching components (R. 170). The Acting Secretary noted finally that the adverse effect on the missile programs was paralleled, because of the strike, in construction of nuclear submarines, the naval shipbuilding program other than submarines (R. 170), and other areas of the national defense effort under the aegis of the Department of Defense.

Secretary of Commerce Mueller had also observed that some items of steel "required in the top priority missile programs are not made by any mill now operating, nor available from any inventory or from imports" and that continuation of the strike "will lead to extended delays in military construction and production, including the missile and satellite programs" (R. 162, 163).

A. R. Luedecke, General Manager of the Atomic Energy Commission, stated in his affidavit that the strike had already produced delays in nine military and civilian atomic energy projects and "should the strike continue unabated, it would induce a spreading slow-down in construction projects resulting in irretrievable delay" (R. 178). New facilities for use in the reactor research and development program have already been delayed and a delay in the completion of the new production reactor at Hanford is probable (R. 178–179). Continuance of the strike into 1960 would appreciably affect the atomic weapons program (R. 179).

Hugh L. Dryden, Deputy Administrator of the National Aeronautics and Space Administration, observed in his affidavit that programs contributing "importantly to the security interests of the United States" had been seriously delayed by the steel strike—for example, (1) the top-priority project Mercury, the nation's manned-satellite program;[8] (2) development of a single-chamber rocket engine capable of generating a million and a half pounds of thrust;[9] (3) Project Vega, development of a large space vehi-

[8] Construction of the Central Flight Control and Range Operations Building, essential to the operation of Project Mercury, has already been delayed by seven weeks by the strike and further delay will make it impossible to meet the original completion date (R. 175).

[9] Construction of two vital test facilities for this program requires a special steel plate which is needed immediately but is unobtainable. Some delay would be experienced even if the strike were ended immediately (R. 175).

cle,[10] and (4) applied research programs in aerodynamics and propulsion [11] (R. 174–175).

Finally, Secretary Mueller noted that on October 16, 1959, the Business and Defense Services Administration of the Department of Commerce issued an order that, upon resumption of steel production, immediate top-priority must be given by steel producers to defense programs. The order applied immediately to the small number of producers not closed down by the strike. However, since many of the required defense items are not now in inventory nor produced by operating plants, "the order will only be a partial solution to defense needs" (R. 166–167).

(3) The effect of the strike on the nation's economy

The affidavits of Government officials pointed up the equally serious consequences to the nation's economic health and safety which have already resulted and which would multiply at an ever-accelerating rate because of the steel strike. Secretary Mueller noted that the range of industries affected was constantly spreading beyond steel and industries related to steel.

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[10] Steel billets needed in the development of the Vega space vehicle are now unobtainable and, because of the lead time needed for processing the steel, any delay in delivery of the billets beyond November 15 will result in a corresponding delay in the Vega schedule.

[11] Completion of the Hypersonic Continuous Flow Facility at the Langley Research Center, needed for testing the effects on ballistic missiles and space vehicles of leaving and re-entering the earth's atmosphere, is now being delayed because the contractor fabricating the test sections is on strike. The original delivery date of January 1960 for the test sections could not now be met even if the strike were ended immediately (R. 175–176).

or dependent upon its finished products, to manufacturing and service industries generally (R. 166). Citing specific examples, he referred to the observable impact on public projects, including work stoppage on highway and bridge projects in 14 states involving 80 million dollars, work stoppage or delay on reclamation and power projects in 11 states involving more than 28 million dollars, and curtailment of construction for the nation's school and dormitory programs (R. 166). He also stressed the significance of the unavailability of certain shapes and forms of steel products in terms of current national needs for both defense and nondefense purposes (R. 162, 165).

Secretary of Labor Mitchell dealt with the growing unemployment problem resulting as an inevitable concommitant of the prolonged and widespread strike. Aside from the 780,000 idled as of October 14, 1959, as a direct result of the strike, scheduled layoffs, as reported by employment offices throughout the country, indicated that by the end of October approximately 365,000 workers who are not on strike will be laid off as a result of it. If the strike should continue until the end of November 1959, the total number made idle as a result of the strike would reach 1,775,000 and by the end of December 1959, 3,000,000. Including the families of men laid off, 9,000,000 persons would be directly and adversely affected by the strike by the end of this year (R. 172–173). As an inevitable corrolative, public relief rolls were growing, and claims for unemployment insurance were increasing rapidly (R. 173). As the Secretary noted, many of the fami-

lies of workers idled by the strike have used up their savings and are now in distress. In Pennsylvania alone, he reported, 17,000 families have been given public assistance because of the strike, and there were 243,000 additional participants in the surplus food distribution (R.173).

Wendell B. Barnes, Administrator of the Small Business Administration, stated the effects of the strike on the nation's 4,300,000 small businesses (R. 180). Many of these businesses, particularly vulnerable to fluctuations in the business cycle, were dependent on but could not obtain essential steel and steel products (R. 180–181). Their ability to compete was thus becoming undermined since they had been unable to store steel supplies as readily as large concerns (R. 181–182). Moreover, many small businesses, though far removed from dependence on steel products themselves, were dependent on the workers of steel and steel product industries as customers and were undergoing a threat to their existence (R. 181). Based on a very recent survey of trade associations and small businesses by officials of the Small Business Administration, it was concluded that if the strike continued through the middle of November 1959 a substantial number of small construction and manufacturing firms would have their business activities sharply curtailed and employment cut down; if the strike extended into January 1960 "the vast majority" of these small manufacturing and construction firms would be forced to close (R. 182). It was concluded that many small businesses would be unable to re-

cover from the losses that would flow from the continuance of the steel strike, while others would feel the effects of the strike for years (R. 184).

The adverse effects on the nation's railroad transportation system and shipbuilding industry as a result of the strike were set forth in the affidavits of Howard G. Freas, Member of the Interstate Commerce Commission, and Clarence G. Morse, Maritime Administrator and Chairman of the Federal Maritime Board. Commissioner Freas noted initially a crucial factor underlying consideration of the consequences of a further continuance of the strike—the freezing over of the Great Lakes around December 1, 1959 (R. 185–186). When that occurs and the iron ore freighters can no longer carry ore to the mills, Mr. Freas stated that rail transportation cannot afford an adequate substitute for carrying the ore (R. 186). He also noted that 60,000 railroad employees had been laid off because of a decline in traffic stemming from the strike (R. 187). Similarly, Chairman Morse concluded as to the shipbuilding industry that, because of disappearing inventories and shortages of specialized items, a continuance of the strike for another 30 to 60 days would mean costly delays to shipbuilding firms, working on both Navy and private contracts, and lay-offs of a high percentage of shipbuilding workers (R. 189–192).

B. THE UNION AFFIDAVITS

The union submitted four affidavits in opposition to the Government affidavits on the question whether the strike will imperil the national health and safety.

Leon H. Keyserling, consulting economist, and Chairman of the Council of Economic Advisers from 1950 to 1953, "compared the economic effect of the general recession which occurred in 1958 with the economic effect of the 1959 steel strike" (R. 95). Basing the comparison on his studies of unemployment, production, and purchasing power figures for the two periods, Mr. Keyserling concluded that "even if the steel stoppage were to continue for some additional time, its impact upon the economy would still be far less than that of the recession" (R. 95). Not venturing "to estimate with any degree of accuracy as to the effect of the steel strike upon the national economy" (R.96), Mr. Keyserling limited his general conclusion on the state of the economy to the comparison of the third quarter of this year with 1958 and did not discuss specific segments of the economy or considerations of national defense.

Meyer Bernstein, economist and International Affairs Representative of the union, stated: (1) that steel capacity still in operation constituted 15.36% of total capacity (R. 102); (2) that steel products have been imported from abroad in ever-increasing quantities (R. 104); (3) that there were informal arrangements between the steel union and Government officials to permit the movement of already manufactured defense items from struck plants (R. 106–107); and (4) that as of September 30, 1959, the impact of the strike, in terms of unemployment, was largely confined to the steel-producing and steel-consuming areas (R. 107–108).

Otis Brubaker, Research Director of the United Steelworkers, submitted an affidavit attesting to the fact that the steel companies still operating "with 15.36% of total industry ingot capacity, themselves have several hundred hot rolling mills and related producing facilities" (R. 123).

Robert R. Nathan, consulting economist, concluded that, combined with the steel incorporated in items already in existence, the available 15% of steel capacity in operation afforded an ample supply so that continuance of the strike would not "imperil the national health or safety, now or in the near future".[12] Mr. Nathan set up five bodies of statistical data to bear out his conclusion. Predicated on his view of certain data with regard to steel usage during the war in 1944, he states that only about 10% to 15% of capacity was used for purposes of health and safety, and, even assuming today's greater population and higher living standards, the amount now available from domestic plants in operation and from imports, excluding defense needs, is adequate (R. 71–81). Much the same type of projection is made, based on studies of (1) steel demand for the years 1940 and 1946, (2) the pattern of steel consumption in 1947, and (3) steel shipments in 1958 (R. 81–91).

Mr. Nathan's assumption, throughout his analysis, as to the meaning of national health and safety is

[12] R. 69. At other points, Mr. Nathan expresses the belief that we can accept safely "a delay of a few months" (R. 70), a "temporary delay" (R. 70), "a period of months" (R. 81), and, finally, a delay for the "short-run" (R. 87).

made clear when he reaches his study of the 1958 steel shipment figures, where he states:

> * * * The principal steel-using items that may be regarded as closely related to health or safety are those connected with food and drug production, processing and distribution, and those needed to maintain transport, utilities and essential services and appliances in sound working order. [R. 89.]

As for defense needs, not taken into consideration in his prior analysis, Mr. Nathan concludes that the quantity of steel needed is less than 5% of the productive capacity of the mills still in operation (R. 91). While he admits that certain specialized defense steel needs may not now be available, he believes that this problem could be met by the President's reopening only a very small number of mills (R. 92).

C. DR. SAULNIER'S AFFIDAVIT

Dr. Raymond J. Saulnier, present Chairman of the Council of Economic Advisers, took issue with Mr. Nathan's position. In an affidavit in support of the President's view that a continuance of the strike will imperil the national health and safety, Dr. Saulnier initially objected to Mr. Nathan's version of national health and safety as "too narrow to be useful" in assessing the impact of the steel strike (R. 195). It was too narrow, according to Dr. Saulnier, in several significant respects: (1) it took no account of the obvious fact that the very basis of the nation's health and safety depended in large part on a vigorous and efficient economy (R. 195); (2) it ignored this nation's

position and responsibilities as leader of the free world and the need to be economically secure to maintain that position (R. 195); and (3) it ignored the equally obvious fact that "[p]ublic morale would deteriorate in an economy deliberately reorganized to operate in low gear"—that unemployment, loss of purchasing power and the inevitable fears and tensions accompanying them would produce severely damaging consequences for our society (R. 195–196).

Dr. Saulnier's second major objection to Mr. Nathan's affidavit was that, even if one agreed with his narrow and restricted view of the relationship of the steel strike to the national health and safety, it nonetheless could not be concluded that the supplies of steel presently reaching the market were adequate (R. 196–197). Mr. Nathan's principal error in this respect was that he compared needs with available supplies in terms of ingot tons, ignoring the fact that steel is made into a vast variety of items, requiring specialized facilities of many different units and plants and the use of closely interrelated processes that often cannot be separated technically or economically so as to produce only specific items needed for defense while not producing other steel products. And to open a few plants to serve these needs would be "totally impracticable," and wasteful (R. 196–197). Moreover, limited sources of steel meant extremely tight Government controls to meet the problems of allocation priorities (R. 198).

Finally, Dr. Saulnier pointed out that Mr. Nathan was extremely vague "as to the maximum duration

of a steel strike that he would regard as tolerable from the standpoint of the nation's health and safety"—even given Mr. Nathan's limited view of that health and safety (R. 198). In Dr. Saulnier's view, the continuance of the strike was intolerable in view of the acceleration of the extensive economic dislocation it was causing. He concluded that "any realistic interpretation of the health and safety of the nation" counseled against taking the risk of permitting "a recession of major proportions—in this case, artificially produced" (R. 199–200).[13]

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[13] Conceding that the "wider and graver effects of the strike are yet to make themselves felt," Dr. Saulnier pointed out that "they may be expected very soon" because of the rapidly-approaching exhaustion of our steel inventories (R. 199–200):

> With the exhaustion of steel inventories, all manufacturing industries that use steel would have to stop operations except to the extent that they can use current output, imports, and substitute materials. This contraction of production is already under way. Reports of layoffs by manufacturers of automobiles, railroad equipment, agricultural and road building equipment, and industrial machinery are noted in newspapers with increasing frequency. Evidence of delays and postponements of construction projects, public and private, is mounting rapidly. Layoffs of several million could result from the spreading impact of steel shortages in steel-using industries and from the secondary effects felt elsewhere in the economy.
>
> * * * An employment decline of this magnitude would be equivalent to a recession of major proportions—in this case, artificially produced. It would involve huge losses of personal income and a needless erosion of individual and social savings. The consequent sharp reduction in funds available for the purchase of food, clothing, and medical care would impose serious hardships on millions of American families and literally endanger their health and safety.

3. THE FINDINGS OF THE DISTRICT COURT

After noting the background of the steel strike and the President's actions, taken in accordance with the Taft-Hartley Act, the district court, in findings 13 through 16, made the factual determinations leading to its conclusion that continuance of the strike imperiled the national health and safety, and, consequently, justified issuance of the statutory injunction (R. 245–247).

The court found initially that the strike had closed down 85% of steel production capacity and that inventories had dropped below the level required to sustain continued production of industries and businesses dependent upon steel products (R. 246). Moreover, 765,000 persons, including the 500,000 striking steel employees, were now idled by reason of the strike, and these workers supported families numbering over 2,000,000 persons (R. 246). If the strike continued through the end of November, 1,775,000 would be made idle as a result of the strike, and 3,000,000 by the end of December of this year (R. 246). Including the families of the unemployed workers, that would mean that, if the strike continued to the end of this year, over 9,000,000 people, would probably be affected (R. 246).

The court then found that the order of the Business and Defense Services Administration of the Department of Commerce, requiring top-priority to be given by steel producers to defense program use, could not meet the essential requirements of the Department of Defense since many of the special steel products

needed were not available in inventory or produced by the plants still in operation (R. 246).

In finding 15, the district court specified the ways in which the strike, if permitted to continue, would imperil the national health and safety. First, the court found that top-priority missile programs required items of steel not made by plants still operating. Any delay in resumption of production would mean an irretrievable loss of time in the supply of weapons systems essential to the defense plans of this nation and its allies (R. 246–247). Second, the continuance of the strike had delayed and would further delay essential space programs, including the top-priority Project Mercury, vital to the nation's security (R. 246). Third, the same sort of delay was adversely affecting the building of nuclear submarines and the naval shipbuilding program, and was thereby injuring national defense and imperiling the national safety (R. 246–247). A final finding on defense needs was that exported steel products were vital to the support of this nation's overseas bases, for NATO, and similar collective security groups, and continuance of the strike would impair these programs, thus imperiling the national safety (R. 247).

As to the non-defense considerations involved, the district court found that continuance of the strike would adversely affect millions of small business enterprises and make idle millions of workers and a large proportion of the facilities in industries dependent upon steel for continued operation (R. 247). It found that manufacturing industries directly depend-

ent on steel mill products account for the employment of about 6,000,000 workers and normal annual wages and salaries totalling approximately $34,000,000,000. The products of these industries were valued at over $125,000,000,000 (R. 247).

Concluding that it had jurisdiction over the parties and that continuance of the strike "will imperil the national health and safety and thereby cause irreparable damage and injury to the United States of America for which there is no adequate remedy at law" (R. 247), the district court issued its injunction.

4. THE DECISION OF THE COURT OF APPEALS

The court of appeals affirmed the judgment of the district court. Chief Judge Biggs, writing for the majority, analyzed and rejected the union's contention that there was no "case or controversy" before the federal court which it could adjudicate in the sense required by the Constitution. Turning to the critical findings of the district court dealing with the impact of the steel strike, the majority concluded, after a detailed review of the entire record, that the findings of the lower court were not clearly erroneous. Significantly, the majority noted that:

> We have examined carefully the contents of the affidavits submitted by the Union. Variances as they exist between these affidavits and those of the United States are created largely by different avenues of approach. We find no variances in the affidavits basically material to the findings made by the court be-

low or to the issues with which we are immediately concerned.

On a review of the entire record we conclude that we cannot say that the findings made by the court are clearly erroneous.

Finally, the majority held that the district court had not abused its discretion in issuing the injunction. With respect to the union's argument that other alternatives existed which could have been utilized by the Government to relieve the danger to the national health or safety created by the steel strike, the majority stated:

> We cannot accept the Union's argument in this respect. If our conclusion is correct that there is sufficient evidence in the record of the present or future danger to national health or safety, we conclude that the danger is great enough and calls for a remedy as sweeping as the law will permit. Whether the remedy provided by the Labor-Management Relations Act is sufficient to accomplish a cessation of labor strife is a question not for this court but for Congress. We conclude, therefore, that the court below did not abuse its discretion in granting the relief which the United States prayed for.

The court buttressed this conclusion by further noting that the national emergency provisions of the Act represented a settled congressional policy as to the machinery available for abating a labor strike creating a menace to the national health or safety.

The dissenting judge (Hastie, J.) did not take issue with the majority's conclusions that (1) the

national emergency provisions of the Act are constitutional and (2) the district court findings as to the imperilment of the national health and safety are adequately supported by the evidence. Rather, the dissenting judge was of the view that "sound discretion" required a denial of the requested injunction because there was no showing that the injunction would promote a negotiated settlement of the labor dispute between the union and the steel companies.

ARGUMENT

The comprehensive ruling and opinion of the Court of Appeals for the Third Circuit has disposed of the issues in this case, and there is no need for further review by this Court. On the constitutional question raised by the union, the Third Circuit below is in accord with an earlier decision of the Second Circuit in 1953, and the petitioner's contentions are clearly without merit. The factual issue of whether the continuation of the current steel strike will imperil the national health and safety has been resolved against petitioner by the concurrent findings of the district court and the court of appeals; no judge has indicated disagreement with these conclusions, and there are no extraordinary circumstances warranting further scrutiny by this Court. The novel view of the emergency provisions of the Labor Management Relations Act of 1947 taken by Judge Hastie, in his dissent below, is plainly incorrect and at war with the purpose and terms of the Act. Accordingly, we believe that the existing delay in the ending of the steel strike, pursuant to the emergency provisions of the Act, can

and should appropriately be terminated by a denial of certiorari.

I. SECTION 208 OF THE LABOR MANAGEMENT RELATIONS ACT OF 1947 IS CONSTITUTIONAL

Petitioner's argument against the constitutionality of the emergency labor dispute provisions of the Labor Management Relations Act, 1947 (61 Stat. 155, 29 U.S.C. 176–180), is entirely without substance and has been effectively answered by the Third Circuit. The union does not question the validity of the provisions as an exercise of the Congressional power to protect interstate commerce against serious interruptions. It urges, however, that the Government's suit seeking an injunction against the present strike does not present a justiciable "case" or "controversy" within the meaning of Article III of the Constitution, and that the statute purporting to confer jurisdiction over this action is therefore unconstitutional. This contention—rejected by the court below and also by the Second Circuit in *United States* v. *United Steelworkers of America,* 202 F. 2d 132 (C.A. 2), certiorari denied before judgment, 344 U.S. 915—ignores the history, purposes, and nature of the jurisdiction vested by Congress in the district courts by the Act.

1. In *In re Debs,* 158 U.S. 564, 584, this Court upheld an injunction obtained by the Government against the Pullman Strike of 1894, on the broad ground that "Every government, entrusted, by the very terms of its being, with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper

assistance in the exercise of the one and the discharge of the other * * *." In 1932, the Norris-LaGuardia Act (47 Stat. 70, 29 U.S.C. 101–115) withdrew a large measure of this jurisdiction from the federal courts.[14] In view of the experience during World War II with emergency-creating labor disputes, Congress decided that the Government must be given power to protect the public when the effect of a labor dispute is to imperil the national health or safety. See *Youngstown Co.* v. *Sawyer*, 343 U.S. 579, 598–599 (concurring opinion). Accordingly, in the Labor Management Relations Act of 1947, Congress removed part of the barrier to the exercise of a jurisdiction which, before 1932, had been exercised by the courts without express statutory authority. To prevent the recurrence of abuses which the Norris-LaGuardia Act was designed to eliminate, jurisdiction was limited to strikes affecting all, or a substantial part, of a national industry, and imperiling the national health or safety; the maximum duration of injunctions was fixed at 80 days; and the circumstances and conditions governing issuance of injunctions were carefully defined.[15]

All the requisites of a justiciable controversy are present, we believe, in a proceeding under the national emergency provisions of the Act. The case or controversy requirement of Article III is a requirement only that there be before the court "a liti-

[14] We do not here touch upon the right of the United States as employer to invoke the aid of the courts in strikes by its employees. Cf. *United States* v. *Mine Workers*, 330 U.S. 258.

[15] See S. Rep. No. 105, 80th Cong., 1st Sess., p. 15.

gant * * * who has a claim presented in a form and under conditions 'appropriate for judicial determination.'" Frankfurter, J., in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 150. It is concerned only with the nature of the proceedings in which courts act, and not with the source of the substantive rights with which they deal.

It is difficult, of course, to define precisely all the elements of a justiciable controversy; in large measure the question is a matter of "the expert feel of lawyers" (Frankfurter, J., in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 150). Whether or not a given proceeding constitutes a justiciable controversy depends only on whether, in the posture in which it comes before the court, its form is of a kind with which courts have been traditionally regarded as dealing. See *Tutun* v. *United States*, 270 U.S. 568, 576, 577. The terms "case" and "controversy" have been given content only by the decisions of myriad cases in varying circumstances, dealing with questions of justiciable as compared with political subject matter:[16] with standing to sue;[17] with the ad-

[16] Compare, *e.g.*, *Colegrove* v. *Green*, 328 U.S. 549; and *Coleman* v. *Miller*, 307 U.S. 433, with *Nixon* v. *Herndon*, 273 U.S. 536; and *Ex parte Siebold*, 100 U.S. 371.

[17] Compare, *e.g.*, *Tileston* v. *Ullman*, 318 U.S. 44; *Tennessee Electric Power Co.* v. *T.V.A.*, 306 U.S. 118; *Premier-Pabst Sales Corp.* v. *Grosscup*, 298 U.S. 226; *Frothingham* v. *Mellon*, 262 U.S. 447, with *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123; *Coleman* v. *Miller*, 307 U.S. 433; *Pierce* v. *Society of Sisters*, 268 U.S. 510; and *Truax* v. *Raich*, 239 U.S. 33.

versary nature of proceedings;[17] with ripeness for decision;[18] and with the finality and enforceability of the relief granted.[19] But under any definition it is hard to conceive of a function more typically judicial than that assigned to the district court by the present statute.

The court is empowered under § 208(a) to grant or deny an injunction if it finds—by the judicial process—certain facts to exist, *i.e.*, that the "threatened or actual strike or lock-out—

> (i) affects an entire industry or a substantial part thereof engaged in * * * commerce, * * * among the several States * * * or engaged in the production of goods for commerce; and
>
> (ii) if permitted to occur or to continue, will imperil the national health or safety * * *

The proceeding is adversary in nature and fully ripe for decision, with the United States as plaintiff asserting that the necessary facts exist and that the law requires the granting of the statutory remedy, and the union and the company as defendants asserting, or free to assert, the contrary. The proceeding

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[17] Cf., *e.g.*, *United States* v. *Johnson*, 319 U.S. 302; *Swift & Co.* v. *Hocking Valley Ry. Co.*, 243 U.S. 281; *Muskrat* v. *United States*, 219 U.S. 346; *Chicago & G. T. Ry.* v. *Wellman*, 143 U.S. 339; *Lord* v. *Veazie*, 8 How. 250.

[18] Compare *Willing* v. *Chicago Auditorium Association*, 277 U.S. 274, with *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 227.

[19] Compare *Hayburn's Case*, 2 Dall. 409; *United States* v. *Ferreira*, 13 How. 40; *Gordon* v. *United States*, 117 U.S. 697; and *Chicago & Southern Air Lines* v. *Waterman S. S. Corp.*, 333 U.S. 103, with *United States* v. *Jones*, 119 U.S. 477.

is conducted throughout in judicial form subject to the ordinary rules of pleading and evidence. The court must decide the controverted issues. The judgment is final and is entered on the docket of the district court as of record, and is enforceable against the defendants by ordinary process. The relief granted is an injunction—traditionally within the function and powers of courts of equity. And the statute provides review by a court of appeals and this Court (§ 208(c)).

2. Notwithstanding the existence of all the traditional elements of a justiciable controversy, petitioner contends § 208 is unconstitutional because it creates no "duties" and confers no "rights" other than the right to seek an injunction. We may, for purposes of argument, accept petitioner's characterization of the legal relationships created by the Act, and assume that the union is under no "duty" to terminate the strike until ordered to do so by the court. For the basic fallacy of petitioner's argument is the premise that the judicial function is limited to adjudicating and declaring *pre-existing* rights and duties and may not extend to the "creation" of rights and duties. To the contrary, a large part of the business of the courts is the granting of relief to applicants whose only "right" is the right to the relief sought.

The unanimous decision of this Court in *Tutun v. United States*, 270 U.S. 568, holding that a petition for naturalization presents a case or controversy within the judicial power of the federal courts, is, we think, dispositive of petitioner's contentions here.

Obviously an alien seeking naturalization does not, prior to the decree of naturalization, have the "rights" of a citizen. His petition for naturalization seeks not a declaration of his existing rights but a decree giving to him a new status, and his only "right" is his right to petition the court for such a decree. Yet the Court, in an opinion by Mr. Justice Brandeis, held that the asserted statutory right to the decree itself presented the necessary case or controversy (pp. 576–578; citations omitted):

> * * * Whether a proceeding which results in a grant is a judicial one, does not depend upon the nature of the thing granted, but upon the nature of the proceeding which Congress has provided for securing the grant. The United States may create rights in individuals against itself and provide only an administrative remedy. It may provide a legal remedy, but make resort to the courts available only after all administrative remedies have been exhausted. It may give to the individual the option of either an administrative or a legal remedy. Or it may provide only a legal remedy. Whenever the law provides a remedy enforceable in the courts according to the regular course of legal procedure, and that remedy is pursued, there arises a case within the meaning of the Constitution, whether the subject of the litigation be property or status. A petition for naturalization is clearly a proceeding of that character.
>
> The petitioner's claim is one arising under the Constitution and laws of the United States. The claim is presented to the court in such a form that the judicial power is capable of act

ing upon it. The proceeding is instituted and is conducted throughout according to the regular course of judicial procedure. The United States is always a possible adverse party. * * * Its contentions are submitted to the court for adjudication. * * *

* * * It is true that the Constitution does not confer upon aliens the right to naturalization. But it authorizes Congress to establish a uniform rule therefor. The opportunity having been conferred by the Naturalization Act, there is a statutory right in the alien to submit his petition and evidence to a court, to have that tribunal pass upon them, and, if the requisite facts are established, to receive the certificate. There is, of course, no "right to naturalization unless all statutory requirements are complied with." The applicant for citizenship, like other suitors who institute proceedings in a court of justice to secure the determination of an asserted right, must allege in his petition the fulfilment of all conditions upon the existence of which the alleged right is made dependent; and he must establish these allegations by competent evidence to the satisfaction of the court. In passing upon the application the court exercises judicial judgment. It does not confer or withhold a favor.

The statutory right of the United States, upon establishing the "requisite facts," to a decree enjoining a strike imperiling the national health and safety is no different in any aspect material to the judicial power from the statutory right of an alien to a decree giving him the rights of citizenship. In neither case

is it necessary that the statutory right be self-executing or be implemented initially by administrative action. Rather, Congress "may provide only a legal remedy" and the right created may be limited to the right to obtain the judicial action provided for. The assertion of that right itself creates the case or controversy, and it is immaterial whether the right previously or otherwise "exists."

Even more closely analogous in nature to the proceedings here are condemnation proceedings. Prior to the order in a condemnation action vesting it with title, the United States obviously has no "right" to the property being condemned and the owner has no "duty" to convey it. The power of eminent domain gives the United States only the right to have the court, in a proper proceeding, direct conveyance of the property to it and thereby create its rights to the property. Yet the federal courts were early held to have jurisdiction over a federal condemnation proceeding as a "suit" at common law, *Kohl* v. *United States*, 91 U.S. 367, and it has never been questioned that such a proceeding presents a case or a controversy. The express statutory right of the United States to have the courts enjoin prescribed conduct deemed inimical to its interests is no less justiciable than its right to have the courts convey to it property deemed necessary to its operations. In neither case does it have a pre-existing right to the thing sought.

Other kinds of admittedly judicial proceedings which have for their purpose the creation of legal relationships, rather than the adjudication and vindi-

cation of *pre-existing* rights and duties (other than the right to the judicial remedy itself), are numerous: for example, divorce (which need not depend upon the grounds for divorce being otherwise a "wrong"); adoption; discharge in bankruptcy; commitment proceedings; appointment of guardians; change of name; and probation of wills. While some of those proceedings are not commonly within the original jurisdiction of the federal courts, that is not because they do not present a case or controversy, for when a federal question is presented they are clearly within the appellate jurisdiction of the Supreme Court.

Another analogy is the judicial enforcement of administrative orders—*e.g.*, subpoenas or cease and desist orders—which have no legal consequences until so enforced. While petitioner contends that such an administrative order in theory gives rise to a "duty" even before enforced, though without a remedy, that distinction reduces the constitutional requirement of a case or controversy to a mere form of words. In that view, § 208 would have been valid if it provided that the President should first "order" the strikers back to work and then seek judicial enforcement of the order, but is invalid because a judicial order is sought in the first instance. That distinction, moreover, cannot explain *Ullmann* v. *United States*, 350 U.S. 422, where clearly the witness had no duty to testify before the grand jury until ordered to do so by the court, for only then did he obtain immunity and lose his privilege under the Fifth Amendment to

refuse to testify.[21] Similarly, under § 10(l) of the National Labor Relations Act, a district court may, on application of the Board, enjoin conduct which it has "reasonable cause to believe" may be an unfair labor practice pending the outcome of the Board proceedings. *Douds* v. *Local 1250, Retail Wholesale Dept. Store Union*, 170 F. 2d 695 (C.A. 2). In such a case, clearly the respondent had no "duty" to cease the conduct prior to the injunction.

A final analogy is the power of the United States, even without express statutory authorization, to invoke the aid of the courts to abate obstructions to interstate commerce. *E.g., In re Debs*, 158 U.S. 564; *Sanitary District* v. *United States*, 266 U.S. 405; cf. *Pennsylvania* v. *The Wheeling &c. Bridge Co.*, 13 How. 518; *Georgetown* v. *Alexandria Bridge Co.* 12 Pet. 91. While it may be possible in those cases to say that the obstruction was always "unlawful", in fact little seems to turn on that and frequently the conduct is unlawful only in the sense that it is subject, in judicial proceedings, to being abated.

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[21] The Court's reliance in *Ullmann* (350 U.S. at 434) on *Interstate Commerce Commission* v. *Brimson*, 154 U.S. 447, shows, moreover, that the teaching of that case does not, as petitioner contends, depend on being able to characterize the administrative subpoena as itself creating an abstract "duty" which is then "enforced" by the judicial order.

3. Moreover, if it were necessary to describe the conduct as "unlawful" in order to make a suit to enjoin it a case or controversy—which we think is clearly not the case—such a characterization of emergency strikes could be made here. The essence of the national emergency provisions of the Act is a legislative judgment that continuation of a strike or lockout which in fact imperils the national health and safety is "wrongful" for it impinges on public interests superior to the private rights of the parties to the dispute.[22] The provision of a remedy by Congress implies, we think, the prohibition of the conduct for which the remedy is created, just as the "imposition of punishment implies a prohibition of the act punished." *Ex parte Siebold*, 100 U.S. 371, 388. The legal "right" protected by the injunctive order is the right, created by the Act, of the United States and the public to be free from a work stoppage threatening the national health and safety. For other examples in which jurisdictional statutes, though phrased in procedural terms, have been construed to create rights

[22] See § 1(b) of the Act, declaring that "above all * * * *neither party has any right* in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest" and that "It is the purpose and policy of this Act * * * to define and *proscribe* practices on the part of labor and management which affect commerce and are inimical to the general welfare, and *to protect the rights of the public* in connection with labor disputes affecting commerce" (emphasis added). The quoted language is language of rights and duties; and when read together with the provisions of § 208 makes clear the substantive content implicit in its remedial phraseology.

and correlative duties, see *Pope* v. *United States*, 323 U.S. 1; *Interstate Commerce Commission* v. *Brimson*, 154 U.S. 447; *Chapman* v. *Marcus Elwood College*, 225 F.2d 230, 231 (C.A. 9).

4. Petitioners' final contention that § 208 assigns to district courts a function which is legislative or administrative rather than judicial is likewise plainly without merit. The granting of injunctions is unquestionably a judicial function, and there is no question here of subsequent administrative or legislative modification of the court's judgment, as in *Hayburn's Case*, 2 Dall. 409, *United States* v. *Ferreira*, 13 How. 40, *Gordon* v. *United States*, 117 U.S. 697, or *Chicago & Southern Air Lines* v. *Waterman S.S. Corp.*, 333 U.S. 103.

We may agree with petitioner that the 80-day injunction is only one of several steps provided by Congress for dealing with strikes and lockouts and that the other steps are not judicial in nature. It by no means follows, however, that the injunction proceedings themselves are not "judicial." There is no necessity that injunctive relief be ancillary to some other judicial proceeding, and the proceeding under § 208 is a complete and independent "case" in itself—affording the United States the substantive relief of being free from the strike for a period of 80 days. The restriction of the injunction to 80 days limits only the extent of the substantive right conferred, and does not mean that the enforcement of that right is non-judicial in character. No injunction is permanent in any

absolute sense (see *United States* v. *Swift & Co.*, 286 U.S. 106) and Congress, having the undoubted power to authorize unlimited injunctions, surely has the lesser power to grant temporary relief.

Moreover, even if the injunction were viewed as being "ancillary" to the other steps to be taken to settle the labor dispute, it would not for that reason be any less a judicial function. To the contrary, Congress can properly vest the federal courts with jurisdiction to issue such equitable relief as may be appropriate in the public interest to encourage peaceable settlement of labor disputes affecting the national welfare. *Virginian Ry.* v. *System Federation*, 300 U.S. 515, 549–553.[23] Contentions similar to those advanced here have been rejected by this Court in connection with the utilization of courts in aid of contracts to arbitrate. *Marine Transit Corp.* v. *Dreyfus*, 284 U.S. 263; cf. *Red Cross Line* v. *Atlantic Fruit Company*, 264 U.S. 109; *Continental Grain Co.* v. *Dant & Russell*, 118 F. 2d 967 (C.A. 9); *Goldhill Trading & Ship. Co.* v. *Caribbean Ship. Co.*, 56 F. Supp. 31 (S.D.N.Y.).

The Act, it may be noted, also provides that, after the expiration of the injunctive period, the President shall refer the dispute, if not by then resolved, to Congress. Here again, it cannot validly be argued that subsequent action by Congress, after such refer-

[23] The many cases in which courts enforcing the National Labor Relations Act have ordered collective bargaining are also in point.

ence, has any effect upon the finality of the court's judgment, so as to convert the court's function into forbidden legislative or administrative action. By the statute's very terms the injunction issued by the district court must have expired before the matter comes before Congress. And the statute does not contemplate Congressional review of the district court's proceeding. Rather, after the expiration of the 80-day maximum "cooling-off" period, in which efforts at settlement by way of conciliation and mediation must be made, Congress reserved the right to examine the facts of the dispute to determine what, if any, further action in the public interest was required.

II. THE CONCURRENT FINDINGS OF THE COURTS BELOW THAT CONTINUANCE OF THE STEEL STRIKE "WILL IMPERIL THE NATIONAL HEALTH AND SAFETY" ARE FULLY SUPPORTED

The case was, by stipulation, submitted to the district court on the affidavits filed by the parties, and the facts attested to in the affidavits submitted by the Government were not controverted by the union's affidavits in any material respect. Those uncontroverted facts are summarized in the Statement (*supra*, pp. 6-17, 20–22), and establish beyond doubt, we believe, that continuance of the strike will, as the district court found and the court of appeals agreed, imperil the "national health and safety." The serious consequences of the strike already felt by the nation's many defense programs has been attested to by the Acting Secretary of Defense (*supra*, pp. 11–12), the General

Manager of the Atomic Energy Commission (*supra*, p. 13), the Deputy Administrator of the National Aeronautics and Space Administration (*supra*, p. 13), and the Maritime Administrator and Chairman of the Federal Maritime Board (*supra*, p. 17). The staggering impact of the strike on the nation's economic health has been shown in the affidavits of the Secretary of Commerce (*supra*, pp. 7–11, 14), the Secretary of Labor (*supra*, pp. 15–16), the Small Business Administration Administrator (*supra*, pp. 16–17), a Member of the Interstate Commerce Commission (*supra*, p. 17), and, finally, by the Chairman of the Council of Economic Advisers (*supra*, pp. 20–22). In both of these areas, the showing has been not only that the steel strike has already had damaging impact but that, if permitted to continue, the consequences would be disastrous. In many cases, the loss would be irretrievable; and each day that the strike is permitted to continue accelerates the pace at which the impact of the existing stoppage of steel production is felt in every phase of the nation's life. The President and both courts below have found that continuation of the strike will imperil the national health and safety, and their concurrent conclusions are entitled to the greatest weight.

Petitioner appears to dispute neither the impact of the strike upon the defense projects nor the economic hardship and dislocations it has brought about and threatens. Petitioner's contentions are rather (1) that the defense needs could be met by some lesser

measures than injunction of the strike and (2) that economic disruptions, even though nation-wide and however severe, are not the kind of "peril" that § 208 permits the President to forestall. In our view, neither contention, both rejected by the two courts below, presents a substantial question calling for review by this Court.

A. THE NATIONAL SAFETY IS IMPERILED BY THE DIRECT EFFECT OF THE STRIKE IN OBSTRUCTING AND DELAYING ESSENTIAL DEFENSE PROJECTS.

Regardless of the other effects of the strike, the effect found by the courts below and the President on defense projects by itself requires that the injunction be sustained. Petitioner does not deny that essential defense programs have been delayed by the strike, that certain kinds and shapes of steel necessary for those programs are not available from the mills still producing or from inventories or imports, and that that effect of the strike is of a nature that § 208 may be utilized to avoid. It contends, however, that the injunction is too drastic a remedy for the need, and that the need could rather be met by reopening a few mills to produce the specific items found to be needed in the defense effort.

Even if the answer were otherwise adequate, however, the solution suggested is not a feasible one. In the first place, as Dr. Saulnier points out (R. 196–197), it is neither technically nor economically possible to reopen a steel mill solely to supply a

specific and limited need of the military.[24] Because of the complexity of the productive processes and the large scale of operation required for even minimum efficiency, it is obviously impractical to reopen a plant for less than full-scale production. And even if technically possible, such selective and limited operation would be "exceedingly uneconomic and wasteful" and would constitute a "grotesque" utilization of our steel-producing facilities. The suggestion, moreover, assumes a sophistication of materiel planning and control that has never been fully achieved even in periods of total mobilization. Even if the needs specifically foreseen could be met by special arrangements and priorities, there would remain the inevitable unforeseen bottlenecks arising from the general shortage of steel. There is simply no machinery now in existence capable of regulating with precision the flow of steel to all the thousands of enterprises directly or indirectly supporting defense projects.

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[24] In support of that point, Dr. Saulnier quoted the Business and Defense Services Administration of the Department of Commerce as declaring that "in order to satisfy defense requirements alone from the standpoint of size, grade, and product," would be necessary to reactivate 25 to 30 hot rolling mills together with supporting blast furnaces, and Bessemer, electric, open hearth and vacuum-melting furnaces. Additional facilities for pickling, coating, heat-treating, cold finishing, shearing, cutting, testing, and the like would also be required. To reopen these plants for the production of steel products to meet only defense requirements would be totally impracticable. The problems of scheduling the limited tonnages involved, plus the cost and technical difficulty of start-ups and shut-downs would appear to be insurmountable." (R. 196.)

Moreover, even if other procedures were available to the President to relieve specific defense needs, there is nothing in the Act requiring them to be exhausted first before proceeding under § 208. Rather, the conditions of § 208 being satisfied, the complete remedy there afforded is available, and the President is not required to resort to an exorbitant and wasteful use of steel-making facilities and a complex and thorough-going system of priorities—even if it could be established in time—in order to meet essential defense needs. In short, the defense effort being imperiled by the present shut-down of 85% of

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There is nothing in the terms or legislative history of the Defense Production Act of 1950, 64 Stat. 798, 50 U.S.C. App. 2061, to suggest that the President was intended or required to exhaust his priority, allocation, and requisition powers under that Act before invoking the national emergency provisions of the Labor Management Relations Act of 1947. On the contrary, the indications are that Congress intended the Defense Production Act not to modify, interfere with, or impinge upon the 1947 Act in any way. Title V of the Defense Production Act dealt with settlement of labor disputes (until April 30, 1953), but Section 503 of that Title, 50 U.S.C. App. 2123, provided that no action taken under the Title should be inconsistent with the Labor Management Relations Act or other labor legislation. See also S. Rep. No. 2250, 81st Cong., 2d Sess., pp. 41-42; 96 Cong. Rec. 11630, 11750, 12175, 12905-6, 14073.

Moreover, when Congress, in 1952, amended the Defense Production Act itself to declare the sense of Congress that the President should invoke the emergency provisions of the Taft-Hartley Act for the then-current steel strike (Act of June 30, 1952, 66 Stat. 305, 50 U.S.C. App. 2123), the legislative history reveals no suggestion that those provisions could not be invoked until use or exhaustion of the priority, allocation, or requisition powers granted by the Defense Production Act. See 98 Cong. Rec. 6598, 6600, 6601-4, 6613, 6615, 6616 (Senate debate); 8023-8050 (House debate).

the capacity of the industry, as petitioner in effect concedes, the conditions of the statute have been met and the injunction must be sustained.

B. THE NATIONAL HEALTH AND SAFETY IS IMPERILED THROUGH THE EFFECT OF THE STRIKE ON THE ECONOMY AT LARGE

If we are correct in our view that the national safety is imperiled by the shortage of steel needed directly for defense projects, it is unnecessary to go further to consider the impact of the strike on the economy as a whole. An independent basis for the injunction, however, is that the mounting economic dislocation, which with the exhaustion of inventories will spread at an accelerated rate, itself imperils the national health and safety. The President and the courts below have so found.

1. In view of the strategic importance of steel production to our economy, the severe and widespread ramifications of a prolonged steel strike cannot be denied. Nor does petitioner seek to deny them. It claims only that such economic hardships are not matters of "national health and safety" within the meaning of the Act. Rather, in its view, "health" can be imperiled only by a physical shortage of essential consumer goods and services: food, drugs, light, heat, communications facilities, etc. (see Nathan affidavit, R. 70–91). In effect, so long as the essential end-products remained available on the market, a steel strike otherwise paralyzing the economy, throwing millions of workers out of work, and bankrupting thousands of businesses, would not affect the "national health". By similar reasoning, petitioner

asserts that the "national safety" is not imperiled so long as current defense projects proceed uninterrupted, however much damage is done to future productive capacity of the country as a whole.

In our view, "national health and safety" cannot be given such a niggardly construction. "National health" includes more than the bodily health of the nation's citizens; when Congress deals solely with physical health, it usually limits its reference to "public" health. "National" health is much broader; it includes the "health" of the nation itself as a viable, productive, economy capable of social progress at home and meeting its obligations abroad. Widespread unemployment and business failures impair the health of the nation no less than malnutrition impairs the health of the citizen, and there is nothing in the legislative history of the Act to show that Congress intended the otherwise broad and flexible standard adopted to be limited in application to the latter.[26] In our view,

[26] Petitioner's sole reliance for a narrow construction of the phrase "national health and safety" is that the bill as it passed the House had contained the phrase "public health, safety, *or interest*" (§ 203(a), H.R. 3020, 80th Cong., 1st Sess.), from which petitioner infers that the Senate, in substituting the present provisions, must have intended sharply to limit their application. In fact, of course, the Senate substituted an entirely new bill for the House bill and the text of the emergency-strike provisions was completely different in the two bills, so that the difference in phraseology does not necessarily reflect anything more than the difference in draftsmen. That the two phrases were not thought to be fundamentally different in scope (though "public interest" may well have been thought to be particularly vague and unlimited) but were used virtually interchangeably is shown, moreover, by the fact that the sec-

therefore, the preservation of the economy from the widespread dislocations resulting from a prolonged nation-wide strike in a basic industry is itself a proper end for the utilization of the injunctive power provided in § 208.

2. Moreover, even if we accept petitioner's contention that "national health or safety" relates only to physical health of our citizens and the security of our country, so that the economic well-being of the nation is not itself an end to be served by such an injunction,

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tion of the House bill which refers to "public health, safety, or interest" bore a heading referring only to "public health and safety," whereas the statute as finally passed speaks in the declaration of policy (§ 1(b)) of practices "which jeopardize the public health, safety, *or interest*" (emphasis added). The various differences of wording which now seem so crucial to petitioner thus seem not to have been matters of concern to the legislators.

More important than the difference in the phraseology used in the House and Senate bills was the difference in the industries covered by the respective provisions. The House bill applied only to strikes which resulted in the substantial curtailment of "transportation, public utility or communication services essential to the public health, safety, or interest" (§ 203(a)), whereas the bill substituted in the Senate and finally passed applied equally to industries engaged in "trade" or "the production of goods for commerce." The expansion of the coverage of the provisions beyond the so-called "essential" industries seems hardly consistent with a purpose to narrow the test of "national health and safety" to an impact upon the availability of "essential" goods and services. That the concern was not so much with the qualitative nature of the public injury (*e.g.*, physical health, as opposed to economic hardship) as with the quantitative scope of the impact of the strike is also indicated by the statement in the Senate committee report that the provision affords relief when a strike "is conducted *on a scale* imperiling the national health or safety." S. Rep. No. 105, 80th Cong., 1st Sess., p. 15 (emphasis added).

it does not follow that "health" and "safety" as so defined are not affected *through* the economic impact of the strike. To the contrary, any serious disruption of our economy ultimately has an effect both upon the nation's ability to resist aggression and upon the health of our citizens.

The relationship of a viable economy to our national security can hardly be doubted. As Dr. Saulnier observed (R. 195):

> A sound and vigorous United States economy is essential not only to maintain the confidence of friendly and uncommitted nations; it is essential also to the deterrence of potential aggressors. For us to give an impression of national inability and, worse than that, of national unwillingness to avert a predictable and avoidable paralysis of a basic sector of our economy could invite military adventurers to set small wars in motion. To fight such wars requires economic flexibility as well as readiness. Inability on our part to mobilize soon enough, or to turn our full productive powers to the challenge with sufficient speed, could have most unfortunate consequences for the nation.

The effect of widespread unemployment upon the health and morale of the public is likewise hardly open to question. Petitioner concedes the essentiality of various consumer goods and services to the "national health"—*e.g.*, food, medical care, heat, shelter—but assumes that that need is met simply by the availability of those goods and services without regard to the ability of the public to pay for them. Obviously, however, the inability of workers to pro-

vide for their families' health needs because of unemployment "imperils" their health just as surely as does the nonavailability of the needed goods.

3. Finally, even accepting petitioner's premise that the "national health" is fully preserved simply by the availability of sufficient steel for the production of "essential" goods and services, its contention is still basically defective. Petitioner's "proof" that the unstruck mills supply sufficient steel for those purposes is limited to a statistical analysis purporting to show that the gross tonnage of steel necessary to maintain essential "health" services is less than the capacity of the unstruck mills (R. 69–91). Accepting that comparison as to the gross ingot tons produced and needed, however, it by no means follows that the specific *kinds* of steel necessary for essential services are available. To the contrary, it appears that specific items that are essential even under petitioner's classification are in fact not available from the operating mills.[27] Moreover, even if all the needed kinds of steel were being

[27] Dr. Saulnier, for example, pointed out that "Mr. Nathan's concentration on aggregates of ingot tons rather than on specific steel items obscures such other vital facts as the following, noted by experts intimately acquainted with the current situation: (i) mills now operating could not supply the axles needed for railroad car use; (ii) less than a minimum supply of rolled railroad wheels can be obtained from plants still in operation; (iii) there is no mill now operating that could supply sizeable quantities of wide and heavy steel plates for vital military and essential civilian uses; (iv) no steel sheet piling, essential in many construction projects, including docks, bridges and dams, is available from presently operating plants; and (v) none of these essential steel products are imported in significant amounts." (R. 197.)

produced, there is no way to assure their being channeled to the uses deemed "essential" by petitioner. No doubt a system of comprehensive Government control over the distribution of all steel products can be hypothesized that would assure priority to essential uses, but the fact is that no such system is now in being or could be created in time to serve the present emergency.

4. In the end, petitioner does seem to accept, at least alternatively, the view that economic disruptions could be sufficiently serious by themselves to impair the "national health or safety." It contends, however, that serious damage has not yet been done and that the President should have waited two or three more months before invoking the national emergency provisions of the Act.[*] The suggestion has no merit. The statute itself contemplates the invocation of the national emergency provisions, not merely to reach a past or existing catastrophe, but to prevent a clearly foreseen threat. The statute plainly and unequivocally states that a national emergency strike is one which, "* * * if permitted to occur or to continue, *will* imperil the national health or safety * * *" (§ 208(a)(ii)). (emphasis added). This preventive reach of the statute alone comports with good sense. Surely, the President should not be required to wait until total paralysis, both in defense production and economic life, has already occurred.

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[*] For example, Robert Nathan expressed the belief that we can accept safely "a delay of a few months", a "temporary delay", a "period of months", and, finally, a delay for the "short-run" (R. 70, 81, 87).

III. TO ENJOIN A STRIKE IMPERILING THE NATIONAL HEALTH AND SAFETY THE COURT IS NOT REQUIRED TO FIND THAT THE INJUNCTION WILL FACILITATE SETTLEMENT OF THE LABOR DISPUTE

The dissenting opinion of Judge Hastie does not disagree with the conclusions of the majority as to the constitutionality of the statute and the sufficiency of the factual showing that continuation of the strike imperils the national health and safety (App. A, *infra*, p. 86). In Judge Hastie's view, the statute imposes upon the courts the duty of determining whether or not issuance of an injunction would facilitate voluntary settlement of the strike by the parties: "* * * a court should not act absent some showing that it will be aiding a negotiated settlement" (App. A, *infra*, p. 93). Examining the affidavits submitted to the district court, Judge Hastie concluded: "The evidence here shows that an injunction would not facilitate and might even make more difficult a negotiated settlement of the steel strike. In these circumstances an exercise of sound discretion must lead to a denial of the requested injunction" (App. A, *infra*, p. 86).

1. The difficulty with the dissenting opinion is that it entirely misconceives the structure and design of the emergency injunction provisions of the statute and the role of the courts in relation thereto. Congress plainly did not intend the courts, in determining whether the statutory conditions exist for issuance of injunctive relief, to exercise a judgment whether such an injunction would be in aid of the collective bargaining process. To the extent that questions of policy are involved, it is Congress which has resolved

them. It is Congress which has made the determination that the national interest requires a temporary cessation of a concerted work stoppage where the conditions prescribed by the statute are found to exist.

Of course, as the legislative history makes abundantly clear, the statutory provisions reflect the view of Congress that, during the suspension of the strike, negotiations between the parties would proceed and the strike might thus be terminated through voluntary settlement. On Judge Hastie's interpretation of the statute, however, it would become a justiciable issue, in every case where an injunction is sought, whether the injunction would enhance or diminish the prospects of settlement. If this is an issue which the court must decide before granting or denying an injunction, the parties would be obliged to present "evidence" upon which such a determination could be based. Necessarily such "evidence" would consist wholly of conjecture and speculation as to the potential impact of an injunction on the situation and the parties and their relative bargaining strength. The proceeding before the court would be turned into an elaborate guessing game as to what might or might not happen if an injunction were to issue. But, as Judge Biggs pointed out, "In this respect no judge or tribunal can foretell the future" (App. A, *infra*, p. 86). Congress was fully aware of the realities of the collective bargaining process, and it is inconceivable that it intended to put upon the courts the burden of conducting such a gossamer inquiry. We submit, on the contrary, that in any case where the required emergency conditions are found to exist, the policy deter-

mination that an injunction would serve the national interest is to be found in the statute and is not an issue for the court. If a court were to undertake in each case to decide for itself whether or not an injunction would be beneficial in furthering the legislative objective, it would become embroiled in a fruitless, time-consuming inquiry—foreign to normal judicial processes—which could only defeat the manifest purposes of the statute, *i.e.*, to bring to a speedy halt a national strike imperiling the national health and safety.

The emergency injunction provisions of the statute were designed, not for the purpose of having the United States throw its weight on one side or the other in the resolution of the controversy, but rather in order to safeguard the safety and health of the Nation from the perils created by prolongation of the strike. Those perils become progressively greater as the strike continues, and the aim of an emergency injunction is to remove those perils, at least for 80 days, while the parties continue to negotiate. Even if in a particular case it might be that the removal of those perils had the incidental consequence of strengthening the bargaining position of one party and to that extent of possibly enlarging the obstacles to voluntary settlement, it is Congress which has decided that the interests of the Nation's health and safety are paramount.

2. Judge Hastie's view that the purpose of the emergency strike provisions of the Act is "not to force strikers to return to work but to facilitate a settlement of a serious industry wide strike by collective bargain-

ing" (App. A, *infra*, p. 86) is, we believe, not supported by anything in the statute or its legislative history. Both indicate, to the contrary, that the very purpose of the provisions was to protect the paramount interest of the public in not having essential production halted by a strike and, to that extent, to subordinate the private interests of the parties to the dispute. That much at least would seem to be established by the declaration of policy in the Act itself that neither management nor labor "has any right * * * to engage in acts or practices which jeopardize the public health, safety, or interest" and that one of the purposes of the Act is "to protect the rights of the public in connection with labor disputes affecting commerce" (§ 1(b)).[29]

Nor are the operative provisions of the Act consistent with Judge Hastie's views. Were an injunction justified only if it would promote a negotiated settlement of the strike, surely the President would be directed to appraise that possibility before seeking an injunction. Yet the statute makes peril to the national health and safety the *only* criterion to be considered by the President (§ 206). Similarly, the board of inquiry, specifically constituted to inquire into the status of the dispute and the body in the best position to appraise the effect of an injunction on the bargaining process, is specifically told only to report

[29] See also the conference report on the final bill, noting that one of the purposes of the Act was "to recognize the paramount public interest in labor disputes affecting commerce that endanger the public health, safety, or welfare * * *." H. Conf. Rep. No. 510, 80th Cong., 1st Sess., p. 1.

on the facts of the dispute and the positions of the parties, not to make any judgment on the efficacy of the injunction to settle the dispute. And § 208, although expressly requiring the court to find whether the national health or safety is imperiled, contains nothing to suggest that the court is to appraise the likelihood that the injunction will promote or hinder the settlement or is to weigh the settlement prospects against the peril to the national health and safety. Finally, if an injunction were authorized only where it could be shown to afford a favorable climate for continued bargaining, there is no reason why its use should be limited to strikes which imperil national health and safety; there is just as much reason to promote peaceful negotiated settlements in any dispute.

The general policy adopted in the Act was, of course, to leave the parties to settle their differences by free collective bargaining without governmental interference. The emergency provisions are an exception to that policy and can hardly be explained as reflecting a belief that an injunction is a good way to settle strikes, a complete reversal of the general policy. Rather, they reflect a judgment that the freedom of the parties to engage in strikes or lockouts, though generally the best way to settle disputes, cannot be allowed to imperil the much greater interest of the public in preserving the national health and safety. That dominant policy pervades the legislative history of the emergency provisions. Thus, the Senate committee report on the bill states that while the role of the Federal Government in most labor disputes "should be limited to mediation, we recognize that the

repercussions from stoppages in certain industries are occasionally so grave that the national health and safety is imperiled" and that the Government should "have the power to intervene and secure judicial relief when a threatened strike or lock-out is conducted on a scale imperiling the national health or safety." S. Rep. 105, 80th Cong., 1st Sess., pp. 14–15. Commenting on the 80-day limitation, the Committee stated: "In most instances the force of public opinion should make itself sufficiently felt in this 80-day period to bring about a peaceful termination of the controversy. Should this expectation fail, the bill provides for the President laying the matter before Congress for whatever legislation seems necessary to preserve the health and safety of the Nation in the crisis" (*id.* at 15). While the Committee report thus reflects a hope that the strike will be settled during the injunction, it states it only as a hope and in no way implies that a prognosis of such a settlement has any bearing on the issuance of the injunction; on the contrary, it stresses entirely the overriding need that such strikes be stopped when they imperil the national health or safety, regardless of the effect of the injunction on the parties.[30]

[30] The debates in the House and Senate on the emergency provisions were entirely in terms of the overriding public interest in avoiding the effects of the work stoppage. Senator Ball, for example, explained that the purpose of the provision "is primarily to protect the public, which is always the secondary sufferer in strikes, no matter how small they may be, and in the industry-wide strikes often becomes the major victim." *Legislative History of the Labor Management Relations Act, 1947* (G.P.O. 1948), p. 1496. For similar statements, see *id.*, 586–587, 669, 868, 882, 905, 913, 926, 1008, 1145, 1518, 1523.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

WILLIAM P. ROGERS,
Attorney General.
J. LEE RANKIN,
Solicitor General.
GEORGE COCHRAN DOUB,
Assistant Attorney General.
WAYNE G. BARNETT,
Assistant to the Solicitor General.
SAMUEL D. SLADE,
SEYMOUR FARBER,
HERBERT E. MORRIS,
Attorneys.

OCTOBER 1959.

Appendix A

United States Court of Appeals
for the Third Circuit

No. 13,056

United States of America

v.

United Steelworkers of America, et al.

United Steelworkers of America, appellant

Present: Biggs, *Chief Judge*, and Goodrich, McLaughlin, Staley, Hastie and Forman, *Circuit Judges*

OPINION OF THE COURT

(Filed October 27, 1959)

PER CURIAM.

In accordance with the practice of this court the opinions in this case were circulated among the members of the court who did not comprise the panel in this case to determine whether they desired rehearing. Judge Kalodner excepted since he disqualified himself. Rehearing is ordered when a majority of the court so votes.

In view of the emergent circumstances of the case the members of the court who did not sit now express their views in respect to rehearing as follows. Judge

McLaughlin and Judge Staley, because of the views expressed in Judge Hastie's opinion, vote for rehearing *en banc*. Judge Forman votes against rehearing *en banc* because of the views expressed in the majority opinion. Since the court is equally divided there will be no rehearing.

United States Court of Appeals for the Third Circuit

No. 13,056

UNITED STATES OF AMERICA,

v.

UNITED STEELWORKERS OF AMERICA, [ET AL.]

* * * * *

UNITED STEELWORKERS OF AMERICA, APPELLANT

Appeal from the United States District Court for the Western District of Pennsylvania

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Argued October 22, 1959

Before BIGGS, *Chief Judge*, and GOODRICH and HASTIE, *Circuit Judges*.

OPINION OF THE COURT

(Filed October 27, 1959)

By BIGGS, *Chief Judge*.

The suit at bar was instituted by the United States, *parens patriae*, against United Steelworkers of

America (the "Union"), an unincorporated labor union, representing, among others, employees in the steel industry, which is engaged in trade, commerce, and transportation among the several States and with foreign nations and in the production of goods for commerce as defined by the Labor-Management Relations Act, 1947, as amended, 29 U.S.C.A. § 141 *et seq.*, 61 Stat. 136 *et seq.* The defendants, ninety-six in number, (the "Steel Companies") are variously engaged in one or more of the stages of steel production, including the mining and transporting of iron ore, the operation of blast furnaces for the conversion of iron ore into pig iron, the production of steel ingots, the rolling and shaping of steel ingots into steel products and the fabricating of finished products.

Collective bargaining agreements between the Union and the Steel Companies expired on June 30, 1959, and unresolved labor disputes between the Steel Companies and their employees represented by the Union as to the terms and conditions of new agreements resulted in strikes of the employees commencing on July 15, 1959 and continuing until the present time. On October 9, 1959, the President of the United States issued Executive Order No. 10843 creating a Board of Inquiry, 29 U.S.C.A. §§ 176 and 177, to inquire into the issues involved in the labor disputes, and in the Executive Order referred to, stated that in his "opinion" the strike was affecting a substantial part of an industry engaged in trade, commerce and transportation among the several States and with foreign nations and in the production of goods for commerce, and that, if permitted to continue the strikes would imperil the national health and safety. 29 U.S.C.A. § 176. The Board of Inquiry convened and inquired into the issues involved in the labor disputes and made its report as required by law on October 19, 1959.

Upon its receipt the President filed the report with the Federal Mediation and Conciliation Service, making its contents available to the public, and instructed the Attorney General of the United States to institute the instant proceedings in the court below.

That court, after extensive arguments and stipulations by the parties whereby they waived service of process and submitted themselves to the jurisdiction of the court and also agreed that the hearing on the petition and affidavits without oral testimony should be a final one, entered an injunction which ordered the Union and its officers and agents to end the strike and also required the Steel Companies to make their plants available for the Union members so that they might resume work therein. This injunction by the terms of the Act must be dissolved in 80 days, 28 U.S.C.A. § 180. The Union has appealed from this injunction. The Judgment is a final one, 28 U.S.C.A. § 1291. No jurisdictional question in the ordinary sense is presented here.

The Constitutionality of the Statute

We are met *in limine*, however, with a constitutional challenge asserted by the Union as to the capacity of the Court below to act in this matter.[1] The

[1] Although ordinarily we think of federal courts being classified only as District Courts, Courts of Appeals, and the Supreme Court of the United States, there is also another classification of federal courts, that of "constitutional" and "legislative" courts. The former, also known as "Article III courts," are created in accordance with Article III, Section 1 of the Constitution which declares that "the judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." These "constitutional courts" are subject to the jurisdictional restrictions of Article III, Section 2, the most important of which, for present purposes, is the exer-

Union relies on Article III, Section 2 of the Constitution which limits the courts of the United States to the judicial function of adjudicating justiciable controversies, citing National Mutual Ins. Co. v. Tidewater Transfer Co., 337 U.S. 582 (1949). Put shortly, it is the contention of the Union that there was no "case or controversy" before the court below which it could adjudicate in the sense required by the Constitution. In this connection the Union points out that Section 178, Title 29, U.S.C.A., states that

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cise of judicial power only in a justiciable "case or controversy," and the judges of these courts have the protection of Article III, Section 1 in that they hold office during good behavior and cannot have their compensation diminished during their continuance in office.

"Legislative" or "Article I courts," on the other hand, do not have such jurisdictional limitations nor do the judges thereof have the protections afforded to judges of "Article III courts." The "legislative courts" are created by Congress as a "necessary and proper" adjunct to its enumerated powers under Article I, Section 8 of the Constitution; such courts may perform legislative and administrative as well as judicial functions. Courts which have been held to be legislative courts include the Territorial courts, the Court of Customs and Patent Appeals, the Customs Court, and the Court of Claims. See 1 Moore, Federal Practice §0.4[3] (2d ed. 1959). The three courts last named, however, have been made constitutional courts by Acts of Congress which need not be detailed here.

The District Courts held in the various States and the Courts of Appeals for the First through the Tenth Circuits are "constitutional courts" as is the Supreme Court of the United States. The United States District Court and Court of Appeals for the District of Columbia Circuit are "legislative courts" for some purposes and "constitutional courts" for other purposes. *Id.* at §0.4[2].

For a general discussion of the legislative-constitutional court dichotomy see Hart & Wechsler, The Federal Courts and the Federal System 340-72 (1953), and 1 Moore, *supra*, at §0.4.

the court "shall have jurisdiction to enjoin any such strike *** *" but, it contends, an injunction can issue lawfully only if it is employed as a remedy to enforce a preexisting legal duty; that here the injunction creates the right and also in the same breath enforces it. The Union relies on the kind of classic equity proceedings where an injunction is issued to prevent the continuance of a tort, to compel performance of a contract, or to enforce a duty already imposed by statute. The Union concedes that both it and the Steel Companies had and have a duty to bargain collectively in good faith and if it had failed to do so sanctions could be imposed upon it under the National Labor Relations Act because of such failure. But the Union argues that while there is a controversy between it and the Steel Companies that controversy was not before the court below in constitutionally justiciable form.

Unfortunately, though the Act is over twelve years old, we have found but one reported case which directly adjudicates this issue of constitutionality under Article III, Section 2; *viz.*, United States v. United Steelworkers of America, 202 F. 2d 132, 138-39 (2d Cir. 1953), affirming United States v. American Locomotive Co., 109 F. Supp. 78 (W.D. N.Y. 1952), cert. denied, 344 U.S. 915 (1953) (Certiorari in this case was applied for and denied prior to the adjudication in the Court of Appeals). Cf. Youngstown Co. v. Sawyer, 343 U.S. 579, 586 (1952).[2]

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[2] There are, however, some thirteen other cases cited in the brief of the United States in which the provisions of Section 178, Title 29, U.S.C.A., were enforced seemingly without constitutional questions being raised. They are as follows: United States v. Carbide and Carbon Chemicals Corp., Civil No. 1098, E.D. Tenn., March 19, 1948 (no opinion); United States v. National Maritime Union (CIO), Civil No. 46-299, S.D. N.Y.

We think it desirable to examine this question *de novo*. It is clear that Sections 176–180 of the Act, 29 U.S.C.A., embody and attempt a legislative solution of problems rising from labor disputes which lead to strikes or lockouts and which, because of their serious impact on national health or safety, may give rise to national emergencies. There was a clear-cut recognition by Congress that labor strife affects adversely important economic and social interests of the public. This appears from the National Labor Relations Act itself enacted long prior to the Labor-Management Relations Act with which we are immediately concerned. The latter Act appears to have two major objectives and it is not necessary to decide here which has primary or secondary status. Congress intended the Labor-Management Relations Act to operate by

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June 11, 1948 (unreported); United States v. National Maritime Union (CIO), Civil No. 25686, N.D. Ohio, June 11, 1948 (no opinion); United States v. International Longshoremen's and Warehousemen's Union (CIO), 78 F. Supp. 710 (N.D. Cal. 1948); United States v. International Longshoremen's Ass'n (AFL), Civil No. 47 157, S.D. N.Y., Aug. 24, 1948 (no opinion); United States v. International Union, United Mine Workers, 77 F. Supp. 563 (D. D.C. 1948), appeal dismissed and aff'd in part 177 F. 2d 29 (D.C. Cir.), cert. denied 338 U.S. 871 (1949); United States v. International Union, United Mine Workers, 89 F. Supp. 187 (D.D.C. 1950); United States v. International Union, Mine, Mill and Smelter Workers, Civil No. 3675, D. Colo., Sept. 5, 1951 (no opinion); United States v. International Longshoremen's Ass'n, 116 F. Supp. 255, 262 (S.D. N.Y. 1953); United States v. Union Carbide and Carbon Corp., Civil No. 2456, E.D. Tenn., Aug. 27, 1954 (unreported); United States v. International Longshoremen's Ass'n, 147 F. Supp. 425 (S.D. N.Y. 1956); United States v. Goodyear Atomic Corp., Civil No. 3394, S.D. Ohio, May 15, 1957 (no opinion); United States v. International Longshoremen's Ass'n, Civil No. 151 280, S.D. N.Y., Oct. 8, 1959 (unreported).

its terms when a strike "affects an entire industry or a substantial part thereof * * *" and "will imperil the national health or safety * * *" 29 U.S.C.A. § 178.

The purposes of the Act are set out in Section 141(b) as follows: "Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations * * * recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest."; and "It is the purpose and policy of this * * * [Act], in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce."

The Congressional intent shown here is, first, to protect the rights of both employers and employees and, second, to bring to an end industrial strife which affects commerce to such a degree as to menace the general welfare. See 29 U.S.C.A. Sections 178 and 179. Whether or not the injunction appealed from has or can have the effect of settling the instant labor dispute depends on the proof offered and goes to the issue of the sound exercise of legal discretion on the

part of the court below. This phase of the case is discussed at a later point in this opinion.

It may be helpful to restate in a few concrete sentences our conception of the congressional intent as expressed in the Act. The underlying concept is one of tort, tortious conduct which affects the national health or safety. See Section 141(b), quoted *supra*. That tortious conduct consists of permitting a labor dispute to continue to the point where national health or safety is imperiled. In point of time the action or non-action of employers and employees becomes wrongful when national health or safety is imperiled. The President then states his opinion that such is the case and constitutes a Board of Inquiry which proceeds as required by law but without recommendations, the making of recommendations being expressly prohibited by Section 176, 29 U.S.C.A. The United States then brings a suit such as that at bar and it becomes the duty of the District Court to find or not to find that the circumstances are such, as prescribed in Section 178, that the national health or safety is imperiled. It would, of course, be impossible ordinarily to fix the exact point in time at which the provisions of the Labor-Management Relations Act becomes operative. The peril must exist at the time the jurisdiction of the United States District Court is invoked and it is the duty of the court in the exercise of its sound legal discretion under the Act to issue an injunction if it finds the necessary operative facts.[3]

In respect to the constitutionality of the Act, the Court of Appeals for the Second Circuit in United States v. United Steelworkers of America, *supra*, at

[3] We point out again that Section 178(a)(ii) provides that the "court shall have jurisdiction to enjoin such strike * * *."

p. 139, said: "The statute creates the right on the part of the public to be protected from the danger of such a strike or lock-out. Whether there is an existing or threatened strike or lock-out which, under the statute, is an invasion of the rights of the public, presents the usual kind of case or controversy which is justiciable by a court."

In United States v. International Longshoremen's Ass'n, 116 F. Supp. 262, 265 (S.D. N.Y. 1953), Judge Weinfeld said: "In exercising jurisdiction under the National Emergencies provisions of the law, the Court acts in the public interest and not in the adjudication of private rights of the contending parties." It is difficult to quarrel with the congressional objectives.

The legislative history supports our view as to the purposes of the Labor-Management Relations Act. It is true, as the Union points out, that the legislation now embodied in Section 178 as it was originally proposed in the House of Representatives had broader scope. Under it the President would have had the power to seek an injunction whenever "a labor dispute has resulted in, or imminently threatened to result in, the cessation or substantial curtailment of interstate or foreign commerce in transportation, public utility, or communication services essential to the public health, safety, or interest,"[4] but in the Senate version, which became what is now Section 178, Senator Taft limited the applicability of the emergency provisions of the statute to situations in which the national "health or safety" was or might become imperiled. But the legislation as enacted nonethe-

[4] See H.R. 3020, Section 203(a), 80th Cong., 1st Sess. See also "Legislative History of the Labor-Management Relations Act, 1947" (2 Vols.) published by National Labor Relations Board.

less seems to us to amply embrace the present circumstances.

We are here concerned with the giving of relief by a court of equity in a situation which is alleged to have impaired and seriously menaces the public interest. Cf. Railroad Commission v. Pullman Co., 312 U.S. 496, 500 (1941), and Virginian Ry. Co. v. System Federation, 300 U.S. 515, 552 (1937). The circumstances of the case at bar are somewhat analogous, albeit in different terms, to those in In re Debs, 158 U.S. 564, 583–590 (1895). In the cited case the United States was held to have *locus standi,* in effect as *parens patriae,* to maintain a proceeding in the nature of a suit to abate a public nuisance. This is a classic field for the interposition of the powers of a court of equity.

Without placing blame upon any of the defendants here, the Union or the Steel Companies, it is alleged, and the government insists that it has proved, that their failure to reach an agreement by the processes of collective bargaining has caused them, and it is feared their country with them, to fall into a slough from which it is necessary to lift them, if only for an 80-day period, lest national health and safety be imperiled. The use of the injunction in a labor dispute, so frequently abused in years past, led to the passage of the Norris-LaGuardia Act, 29 U.S.C.A. §§ 101–115, which prohibited the injunction in a bona fide labor dispute. But the Labor-Management Relations Act specifically has limited the exemption against injunctions in labor disputes granted by the Norris-LaGuardia Act. See Section 178(b), 29 U.S.C.A. However undesirable we may deem the use of the injunction in labor disputes to be, nonetheless Congress has seen fit to reinstate it to the limited degree indicated. The old law of the injunction in the labor dispute, to the

extent prescribed, seems to have been returned by Congress to at least part of its former standing and we are compelled to adhere to the posture which Congress has placed upon it.

Historically injunctions in labor disputes dealt with the status of groups, sometimes large groups, of employees. Such decrees may perhaps be described, not entirely inaptly, as "status" judgments. Groups of employees were ordered to return to work or face contempt proceedings. Rarely was an employer subject to a decree preventing lockouts, but this is beside the point. When a court enters a status judgment such as that at bar, in our opinion it acts judicially and not legislatively. If this were not so a substantial portion of the jurisdiction granted to courts of the United States by Congress would fall within the interdiction of Article III, Section 2, of the Constitution. Orders of the National Labor Relations Board frequently would come into such a category, as would orders of the Securities and Exchange Commission, as well as orders of the Interstate Commerce Commission reviewable by the United States district courts under the Urgent Deficiencies Act. Petitions for review of decisions of the United States Tax Court would also fall within the interdiction. Proceedings to require the issuance of a patent by the Commissioner of Patents under R.S. 4915 would also meet the ban, Morgan v. Daniels, 153 U.S. 120 (1894), as would proceedings for naturalization. Tutun v. United States, 270 U.S. 568 (1926). Cf. McGrath v. Kristensen, 340 U.S. 162, 167–168 (1950). The line dividing the powers of the legislative tribunal as distinguished from those of the judicial tribunal is of necessity a fine one.

We conclude that the court below was called upon to make and did make a judicial rather than a legis-

lative type of judgment. Our conclusion in this regard is confirmed, we think, by contrasting the statute as enacted with the House proposal which was rejected. The House would have called upon a district court to act whenever in its judgment the public interest was imperiled. This would have left the court at large in deciding the expediency of action guided only by statesmanlike conception of the public welfare. But, as enacted, the statute requires decision whether the evidence adduced in a case shows serious interference with essential national defense activities or threatened impairment of public health. See note 4, *supra*. This is specific enough and factual enough to bring the inquiry within the area of judicial decision as distinguished from legislative judgment, as in our policy the two are distinguished.

We are of the opinion, for the reasons stated, that the proceeding at bar does constitute a justiciable controversy and does not incur the interdiction asserted by the Union to arise under Article III, Section 2, of the Constitution.

Findings of Fact by the Court Below

All the necessary jurisdictional facts were found by the court below in its findings of fact, Nos. 1 to 16, inclusive. Findings Nos. 9, 10, 11, 12, 13, 15 and 16, however, are set out in this opinion for the benefit of the reviewing Court. They are as follows:

> 9. The strike on the part of the Union resulted from unresolved labor disputes between defendant employers, who are engaged in one or more of the various stages of steel production, including the mining and transport of iron ore by railroad or vessel, the operation of blast furnaces for the conversion of iron ore into pig iron, the production of steel ingots, the rolling and shaping of steel ingots into various shapes

and forms of steel products, and the fabricating of certain finished products, and certain of their employees represented by the Union.

10. The Board of Inquiry made an investigation of the issues and attempted to have the defendants resolve the dispute by free and collective bargaining. These efforts on the part of the Board of Inquiry were unsuccessful and the disputes remain unresolved.

11. The report of the Board of Inquiry concludes that "the parties have failed to reach an agreement and we see no prospects for an early cessation of the strike. The board cannot point to any single issue of any consequence whatsoever upon which the parties are in agreement." Unless the Court grants the injunction sought by the United States the strike will continue for an indeterminate period.

12. The strike affects a substantial part of the steel industry of the United States, which is engaged in trade, commerce and transportation among the several States and with foreign nations and in the production of goods for commerce.

13. The strike, which commenced on July 15, 1959 and has continued until the present time, has resulted in the closing on July 15, 1959 of facilities producing at least 85% of the total steel production of the United States. Inventories of steel have dropped from 24,800,000 tons on July 15, 1959 to approximately 10,000,000 tons. This is below the normal inventory level and is below the level required to sustain continued production of industries and businesses dependent upon steel products. Approximately 500,000 striking members of the Union are now unemployed and more than 265,000 employees are idle in other industries by reason of the steel strike. The 765,000 unemployed support families numbering over 2,000,000 persons. If the strike were to continue, the total number of workers made

idle by it would probably reach approximately 1,775,000 by the end of November and approximately 3,000,000 by the end of December. By that time more than 9,000,000 people would probably be affected by the strike.

15. The strike, which has now been in existence for more than 95 days, if permitted to continue, will imperil the national health and safety in the following respects:

(a) Certain items of steel required in top priority military missile programs of the United States are not made by any mill now operating, nor available from any inventory or from imports. Any further delay in resumption of steel production would result in an irretrievable loss of time in the supply of weapons systems essential to the national defense plans of the United States and its allies.

(b) The planned program of space activities under the direction of the National Aeronautics and Space Administration has been delayed by the strike and will be further delayed if it is continued. Specifically, project MERCURY, the nation's manned satellite program, which has the highest national priority, has been delayed by reason of delay in construction of buildings essential to its operation. This program is important to the security of the nation. Other planned space programs will be delayed or threatened with delay by a continuation of the strike.

(c) Nuclear Submarines and the naval shipbuilding program other than submarines, including new construction, modernization, and conversion, have been affected by reason of the inability to secure boilers, compressors, and other component parts requiring steel. Products of the steel industry are indispensable to the manufacture of such items and delay in their production will irreparably injure national defense and imperil the national safety.

(d) Exported steel products are vital to the support of United States bases overseas and for the use of NATO allies and similar collective security groups. The steel strike, if permitted to continue, will seriously impair these programs, thus imperiling the national safety.

(e) A continuation of the strike will have the ultimate effect of adversely affecting millions of small business enterprises, almost all of which are directly or indirectly dependent upon steel products and most of which lack the resources to stock large inventories. In addition, it will have the effect of idling millions of workers and a large proportion of the facilities in industries dependent upon steel for their continued operation. Manufacturing industries directly dependent on steel mill products account for the employment of approximately 6,000,000 workers and normal annual wages and salaries totalling approximately $34,000,000,000. The products of these industries are valued at over $125,000,000,000. The national health will be imperiled if the strike is permitted to continue.

16. Such results, if the strike is permitted to continue, will imperil the national health and safety and thereby cause irreparable damage and injury to the United States of America for which there is no adequate remedy at law.

Proof

This case was submitted to the court below on affidavits and without oral testimony. This method was agreed to by both sides. The result of this method of proof is that the rule which calls upon us to support the findings of the district judge unless clearly erroneous is inapplicable so far as it has to do with the trial court's opportunity to observe the

demeanor of the witnesses and like matters. Fed. R. Civ. Proc. § 52(a), 28 U.S.C.A. Moreover, it necessarily deprives the instant record of any elaboration of the evidence of the various affiants which could have been brought out had they appeared in person as witnesses and had been subjected to examination and cross-examination in the usual fashion.

The Union contends that the contents of these affidavits are insufficient to bring the case within the reach of the Labor-Management Relations Act. It points out that the scope of Section 178, 29 U.S.C.A., is limited to situations which will imperil "the national health or safety". The Union says that the country, despite the strike, is prosperous, and that a comparatively small part of the steel output is needed for national defense work and that the steel required for "health" in order to meet the needs of hospital construction and the like is very limited indeed. Moreover, asserts the Union, if the United States needs more steel for any particular defense use or uses, the Union, so far as it has power to do so, will cooperate patriotically in seeing that the necessary supply of steel is forthcoming. Furthermore, the Union shows that there is still a good-sized inventory of steel on hand, that steel is available from foreign sources, and that any contention that the industrial dispute with which we are concerned is imperiling the safety and health of the nation is unrealistic because there is no immediate threat of harm.

That portion of the Union's argument that centers attention on today's calm rather than on tomorrow's approaching storm is not well taken. The words of Section 178(a)-(ii) speak to the future; viz., "If [the strike is] permitted * * * to continue [it] will

imperil the national health or safety", as has been repeatedly pointed out, is the pertinent phrase. How far into the future may the United States and the courts look? The Act contains no definition. But there is testimony in the record that the current supplies of steel are very rapidly diminishing. Nor does the proffer of the Union's assistance to get a plant or plants open help much here. The steel industry is too vast and too complicated to be segmented so as to make such a desirable result practicable.

The affidavit of Dr. Raymond J. Saulnier, Chairman of the Council of Economic Advisers, comments cogently on the Union's suggestion that there be a selective reopening of a small number of mills to meet national defense needs. Dr. Saulnier states:

> Steel is not chemically or physically uniform; its products comprise a vast variety of items, made and further processed in specialized facilities of many different mills and plants. * * * Steel is produced through closely interrelated processes that often cannot be separated technically or economically to allow production of items "needed" * * * omitting items "not needed." On this point, the Business and Defense Services Administration of the Department of Commerce declares that "in order to satisfy defense requirements alone from the standpoint of size, grade, and product, it would be necessary to reactivate 25 to 30 hot rolling mills together with supporting blast furnaces, and Bessemer, electric, open hearth and vacuum-melting furnaces. Additional facilities for pickling, coating, heat treating, cold finishing, shearing, cutting, testing, and the like would also be required. To reopen these plants for the production of steel products to meet only defense requirements would be totally impracticable. The problems of scheduling the

limited tonnages involved, plus the cost and technical difficulty of start-ups and shut-downs would appear to be insurmountable.

* * * * *

Obtaining adequate supplies of * * * essential civilian items of steel, like obtaining steel for defense purposes, would clearly require the reopening of more than just a few mills. It would also require the reopening of many related facilities for supplying the component materials of steel-making and for processing, finishing, and distributing steel products.

Even if it were technically possible to resume steel production on this selective basis, to do so would be exceedingly uneconomic and wasteful. Presumably the Federal Government would be required to underwrite some part of the costs of such a wasteful operation of facilities. For government to undertake such a grotesque, inefficient and costly organization of our steel-producing facilities by reason of a national strike would be offensive to the public conscience, as well as to the public interest.

Other affiants are cabinet officers or the heads of government departments. It is true that some of the statements in the affidavits represent conclusions on facts rather than statements of present facts and of necessity they contain some element of prognosis. These witnesses were entitled to look to the future for the Act itself so looks. Moreover, as was necessarily admitted at the argument before this court, these cabinet officers and department heads speak as experts in their fields of governmental operations. As experts the affiants were entitled to state conclusions as well as facts for the benefit of the court below. The court below was entitled to weigh their testimony in a different light from that of a witness who testi-

fies that a motor car was or was not on a portion of the highway where it did not lawfully belong.

The affidavits referred to contain strong statements indicating that the effect of a prolongation of the present strike would definitely imperil the national health and safety and that disaster must ensue if the strike continues. Secretary of Commerce Mueller stated:

> Steel plays a role in our economy and in our lives that is crucial in the most literal sense of the word. Indeed, the use of steel in our economy is so pervasive and important that our whole system of production and distribution and our national security, health, and safety are being seriously impaired by the prolonged interruption in its availability.
>
> * * * * *
>
> In response to Department of Defense requests for aid in the procurement of items not currently being produced, the Department of Commerce has been unable to carry out its responsibility to be of assistance. It is clear that a continuation of the steel strike will lead to extended delays in military construction and production, including the missile and satellite programs.
>
> * * * * *
>
> The steel strike if permitted to continue will seriously impair our security and defense program, thereby imperiling the national safety.
>
> * * * * *
>
> * * * it is my opinion that the aforesaid strike, if permitted to continue, will do irreparable damage to our foreign trade, to our domestic trade and to our defense posture. It will therefore seriously imperil the national health and safety.

Acting Secretary of Defense Gates was no less positive in what he had to say:

> I can state unequivocally of my knowledge that steel is one of the most essential elements in the national defense program of the United States and that beyond a certain point of delay in normal deliveries there occurs an irreparable injury to the national defense and consequently to the national safety.
>
> In my opinion and in the opinion of those persons in the armed services who have the greatest knowledge of these matters, such a point has now been reached and any further delay in resumption of steel production would result in an unretrievable loss of time in the supply of weapons systems essential to the national defense plans of the United States and its allies.
>
> * * * *
>
> Three basic ballistic missile weapon systems are the ATLAS, TITAN, and POLARIS. Of these the first two require land based launching sites involving both above and below ground facilities using large quantities of special steels. The POLARIS weapon system includes not only the missile itself but, as well, a special design of nuclear submarine for launching. In the unique design of these weapons are the facilities which are required to make them operational. A significant portion of the steel specified in the procurement contracts is of a composition not common to commercial usage nor available from existing civilian inventories by exercise of allocation or eminent domain powers of the Government.
>
> In addition to the necessity for special alloys and steel compositions, these programs in many cases require special sizes and shapes, many of which can be fabricated only by firms having long experience in their production and the

necessary special facilities therefor. In summary, the shortage of steel for the missile program is not a problem solvable by the mere exchange of other types and forms of steel available in inventories still existing for other purposes or in commercial stocks.

* * * * * *

In my opinion and in the opinion of those charged with responsibility for the completion of these programs, the delays which have now occurred are only a foretaste of the increasingly greater delays to come if immediate resumption of work in the steel plants does not occur. The lag time to reach production, the further time required to transport the steel to the fabricator, and the delay occurring thereafter before delivery of the finished component creates a situation where the future scheduling of defense supplies is subject not only to existing but to future indeterminate delay.

* * * * * *

Each day the strike continues will, in my opinion, add further examples of serious consequences to the shortages now existing and will adversely affect the national defense and imperil the national safety.

Secretary of Labor Mitchell stated that:

* * * it is my opinion that this strike will, if permitted to continue, seriously imperil the National health and safety.

Deputy Administrator Dryden of the National Aeronautics and Space Administration, commented on the effect of the strike on the nation's space program.

As the result of information which I have thus received, it is my opinion that the current strike affecting the steel industry has had an adverse

> effect on accomplishment of the presently planned program of space activities. This opinion is based upon the specific examples described * * *.

General Manager Luedecke, of the Atomic Energy Commission, referred to the effect of the strike on that agency's program.

> Continuity of operation of the Atomic Energy Commission's programs is essential to the national defense. The Commission or its contractors have had on hand or procured sufficient supplies so as not to have been materially affected by the steel strike in construction or repair projects, up till now. However, the strike has already produced delays, so far of a minor nature, in nine military or civilian projects located in California, New Mexico, Nevada, Ohio, New York, and Idaho; and should the strike continue unabated, it would induce a spreading slowdown in construction projects resulting in irretrievable delay * * *. If the strike continues into early 1960, there would be an appreciable effect upon the weapons program.

We have examined carefully the contents of the affidavits submitted by the Union. Variances as they exist between these affidavits and those of the United States are created largely by different avenues of approach. We find no variances in the affidavits basically material to the findings made by the court below or to the issues with which we are immediately concerned.

On a review of the entire record we conclude that we cannot say that the findings made by the court below are clearly erroneous.

The Injunctive Remedy.

The Union argues that even if it be assumed that the findings of the court below are not clearly erroneous an injunction is far too sweeping a remedy for the ills which the court found will result from the continuance of the strike. It points out that the provisions of Section 178(a)(ii), 29 U.S.C.A., merely gave to the court below "jurisdiction to enjoin". The United States contends that on the findings of the court below which we have approved the injunction must issue and that the case presented is so strong that a court of equity would be in error if it refused to give the relief prayed for. In short, the Union contends that the court below in granting the injunction abused its legal discretion and the United States asserts that if the court below had not granted the injunction the refusal would have been a breach of discretion.

A portion of the Union's argument in this regard is that there are other statutes which could have been employed by the United States adequately to relieve any danger to the national health or safety and which would have called for a much less drastic remedy than the injunction appealed from. This is a consideration which a court of equity of necessity must weigh.

The Union points out that Section 101(a) of the Defense Production Act of 1950 as amended, 50 U.S.C.A. App. § 2071(a) (Supp. 1958), authorizes the President:

> "* * * (1) to require that performance under contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and, for the purpose of

> assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance, and (2) to allocate materials and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense.

Additionally, Section 708, 50 U.S.C.A. App. §2158, of the same Act authorizes the President:

> * * * to consult with representatives of industry, business, financing, agriculture, labor, and other interests, with a view to encouraging the making by such persons with the approval by the President of voluntary agreements and programs to further the objectives of this Act.

The stated policy of the Act is "to provide for the national defense and national security". Sec. 50 U.S.C.A. App. 2062 (Supp. 1958).

Finally, the Order refers to Section 18 of the Universal Military Training and Service Act, 50 U.S.C.A. App. 468, which provides:

> Whenever the President after consultation with and receiving advice from the National Security Resources Board determines that it is in the interest of the national security for the Government to obtain prompt delivery of any articles or materials the procurement of which has been authorized by the Congress exclusively for the use of the armed forces of the United States, or for the use of the Atomic Energy Commission, he is authorized, through the head of any Government agency, to place with any person operating a plant, mine, or other facility capable of producing such articles or materials an order for such quantity of such articles or materials as the President deems appropriate. Any person with whom an order is placed pur-

suant to the provisions of this section shall be advised that such order is placed pursuant to the provisions of this section * * *.

(c) In case any person with whom an order is placed pursuant to the provisions of subsection (a) [of this section] refuses or fails—

* * * * *

(2) to fill such order within the period of time prescribed by the President or as soon thereafter as possible as determined by the President;

* * * * *

the President is authorized to take immediate possession of any plant, mine, or other facility of such person and to operate it, through any Government agency, for the production of such articles or materials as may be required by the Government.

We cannot accept the Union's argument in this respect. If our conclusion is correct that there is sufficient evidence in the record of the present or future danger to national health or safety, we conclude that the danger is great enough and calls for a remedy as sweeping as the law will permit. Whether the remedy provided by the Labor-Management Relations Act is sufficient to accomplish a cessation of labor strife is a question not for this court but for Congress. We conclude, therefore, that the court below did not abuse its discretion in granting the relief which the United States prayed for.

But there is another consideration here which is of vital consequence on the issue of the sound exercise of legal discretion by the court below. Section 179, 29 U.S.C.A., provides the machinery to be employed during the 80-day injunction period for the adjustment by the parties of their differences. This most important portion of the statute provides that it shall be "the duty

of the parties to the labor dispute * * * to make every effort to adjust and settle their differences" with the assistance of the Service created by the Act. It further provides that upon the issuance of the injunction the President shall reconvene the Board of Inquiry which previously reported in respect to the labor dispute and at the end of a 60-day period, unless the dispute meanwhile has been settled, the Board of Inquiry shall report to the President the current position of the parties and the efforts which have been made to settle the dispute including a statement "of the employer's last offer of settlement". The President is required by law to make that report available to the public. Last, but by no means least important, Section 179 provides that the "National Labor Relations Board, within the succeeding 15 days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer", and that the National Labor Relations Board shall certify the results to the Attorney General of the United States within five days thereafter.

If the injunction does not issue the machinery designed by Congress to effect an end to the labor strife, which as we have indicated is one of the prime purposes for which the statute was enacted, cannot be employed, and the menace to national health or safety, the other prime statutory purpose, perhaps cannot be abated. Congress has designed this machinery and has settled the policy embraced in the Labor-Management Relations Act. While the court below in the exercise of its sound legal discretion might have found that the exercise of the provisions of Sections 178 and 179, 29 U.S.C.A., would be ineffectual, rather than efficient, to quell labor strife and obviate the menace

to national health or safety, in the light of all the circumstances we cannot say that in issuing the injunction the trial court abused its sound legal discretion. In this respect no judge or tribunal can foretell the future.

The judgment of the court below will be affirmed. Our stay order will be continued for a period of six days to allow aggrieved parties, should they desire to do so, to petition the Supreme Court for *certiorari*. Any further stay must come from the Supreme Court.

HASTIE, *Circuit Judge*, dissenting.

Without challenging the conclusions of the majority as to the constitutionality of the statute and the sufficiency of proof that the continuing national steel strike imminently threatens serious interference with essential national defense production, I still am not persuaded that a case has been established for the issuance of a Taft-Hartley injunction.

These are the steps in my reasoning. The injunction sought here is an equitable remedy and, therefore, is to be granted or withheld in the exercise of a sound discretion. Accordingly it should not be granted if it apparently would not accomplish its objective. In the emergency strike provisions of the Taft-Hartley law, the primary purpose of a temporary injunction is not to force strikers to return to work but to facilitate a settlement of a serious industry wide strike by collective bargaining. The evidence here shows that an injunction would not facilitate and might even make more difficult a negotiated settlement of the steel strike. In these circumstances an exercise of sound discretion must lead to a denial of the requested injunction. This reasoning is elaborated in what follows.

The national emergency strike provisions of the Taft-Hartley Act, 29 U.S.C. §§ 176–180, do not purport to determine the merits of a labor dispute or to terminate a strike by judicial order. The statute merely authorizes a court temporarily to suspend a strike of a certain nationally very harmful type[1] for a period of not more than eighty days while the parties negotiate and the strikers ultimately vote whether to accept whatever final offer management may make. This duty to negotiate and vote is explicit and constitutes the whole machinery of settlement set up by the statute. Thus the apparent purpose of the statute is to create for a limited time a more favorable environment for collective bargaining between the parties to a nationally hurtful strike with the hope and expectation that bargaining and related procedures, outlined in Section 179 of Title 29, will accomplish a settlement of the strike.

It is true that a Taft-Hartley injunction may also have the immediately helpful effect of temporarily restoring much needed production. But if this had been the objective primarily in view, there would have been no reason for limiting the term of the injunction to an eighty day period of attempted settlement. Reflecting his primary concern with achieving a negotiated settlement, Senator Taft, the principal sponsor of the legislation, explained its philosophy to the Senate in these words:

> We did not feel that we should put into the law, as a part of the collective-bargaining machinery, an ultimate resort to compulsory arbi-

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[1] Presumably it is only when a strike imminently and seriously threatens very important national interests that an exception is made to the general policy of non-interference by federal courts in labor disputes.

tration, or to seizure, or to any other action. We feel that it would interfere with the whole process of collective bargaining. 93 Cong. Rec. 3951.

It is also to be considered in judging the primary purpose of the legislation that Congress had already conferred sweeping and more direct authority upon the Executive for satisfying emergency national needs for materials and commodities by seizing struck plants under Section 18 of the Universal Military Training and Service Act[2] and by allocating scarce supplies under Section 101 of the Defense Production Act of 1950 as amended.[3] It is reasonable to believe that some different purpose motivated the Congress in authorizing temporary injunctions under the Taft-Hartley law.

To accomplish its purpose the statute invokes the equity jurisdiction of the district courts. This is done by the provision that if the continuation of a strike of a substantial part of an industry will impair national health or safety, the district court "shall have jurisdiction to enjoin any such strike [for a period which cannot exceed eighty days] * * * and to make such other orders as may be appropriate." The case might have been different had the statute provided for an administrative hearing and determination and an administrative order suspending a strike, with the judicial role limited to enforcement of any permissible order. But Congress having chosen to refer the whole problem to a court of equity exercising its normal historic jurisdiction, the court must consider in

[2] This provision as it appears in 50 U.S.C. App. § 468 is quoted in the majority opinion at page ——.

[3] This provision as it appears in 50 U.S.C. App. § 2071 is quoted in the majority opinion at page ——.

the normal fashion of equity whether injunctive relief will serve its intended purpose. Equity refrains from issuing orders which appear vain in that they seem unlikely to serve their intended purpose.

To put the matter somewhat differently, there is no legislative mandate that a court shall grant an injunction whenever a strike is imperiling national health or safety, though such peril is essential to jurisdiction. Rather, a court sitting in equity is called upon to balance all equitable considerations inherent in the statutory scheme or disclosed by the evidence in a given case. Under this analysis a primary and essential equitable consideration must be whether the underlying public purpose of the statute to promote and facilitate more effective bargaining would be served. Indeed, in my judgment some utility in accomplishing this primary purpose of the legislation should provide the principal equitable justification of injunctive relief.

Thus, a court, before issuing an injunction under Section 178 of Title 29, should satisfy itself that there is a reasonable basis for belief that a forced suspension of the strike will aid and accelerate the process of collective bargaining. In terms of the present case, has it been made to appear here that the parties are more likely to settle their dispute within the next eighty days if the strike is suspended for that period by court order than they are to accomplish this result while the strike continues?

Examining the pleadings and proof in the present record it appears that neither the government which seeks the injunction nor the steel companies whose employees are striking has shed any light on this critical question. Certainly there is no indication that violence or any other exacerbating conduct in the

course of the strike is creating a climate harmful to negotiation. There is no suggestion that any tension or hostility inimical to negotiation would be relieved or any impediment to settlement removed by a suspension of the strike. There is simply nothing before us which warrants a conclusion that the objective of more productive bargaining would be served by an injunction.

On the other hand there is evidence to the contrary. The question is necessarily one of judgment informed by experience with the course of this strike and the history of other similar situations. The parties have elected to try this case on affidavits. The affidavit of David J. McDonald, President of the defendant union is relevant here. He has deposed as follows:

> On the basis of the information available to me, I firmly believe that if the injunction which is anticipated by these companies should not be issued, a major stumbling block to the negotiation of a voluntary settlement of this dispute will be removed, and a settlement of the dispute will be achieved through the process of free collective bargaining. It is, of course, impossible to predict with certainty the time which will be required to reach such a settlement or what the terms of the settlement will be. I am certain, however, that the anticipation that the strike will be ended or interrupted by an injunction, has operated to remove the economic pressures which would otherwise be felt by both sides to reach a settlement, and that those pressures will operate to assure a settlement within a short period of time if the anticipation of an injunction is removed.
>
> My firm belief that the anticipation of an injunction has, in fact, prevented a settlement

> from occurring to date is supported by the views expressed by such impartial experts as George W. Taylor, the Chairman of the Board of Inquiry appointed by the President in this dispute, and former Chairman of the National War Labor Board and the Wage Stabilization Board, Nathan P. Feinsinger and W. Willard Wirtz, both former members of the National War Labor Board and both former Chairmen of the Wage Stabilization Board, in interviews published in the October 19, 1959, issue of U.S. News & World Report, and reproduced, in part, in Appendix B to this affidavit.

The above mentioned statement of George W. Taylor, Chairman of the Presidential Board of Inquiry for this strike and former Chairman of the National War Labor Board, upon this subject was published in question and answer form:

> Q. How do you feel about the Taft-Hartley machinery for handling big strikes?
>
> A. [Taylor] Everybody knows it's not adequate to handle those strikes. If the Taft Hartley procedures are meaningful, they should serve the same function as a strike that is, get people to modify their extreme positions. I don't think they have done that.

Also in the record is the statement of Nathan P. Feinsinger who has served on the National War Labor Board and the Wage Stabilization Board, and who was chairman of Presidential fact finding boards convened to inquire into the steel and meat packing strikes of 1946 and 1948. Speaking of the effect of Taft-Hartley injunctions, Mr. Feinsinger said:

> A study of the records shows that, in some cases, the injunction has merely stiffened the resistance of the unions. There is a traditional resistance of labor to the injunction as a strike

breaking device. I know of no case where an injunction, as such, cleared the atmosphere or expedited the settlement of a dispute.

It also merits mention, although the court below did not have this information, that the very day this case was argued to us both the President, who has invoked Taft-Hartley procedures in this case, and his Secretary of Labor issued public statements deprecating this procedure by injunction and expressing the view that it is not an effective aid in settling an industry wide strike. For the text of the President's statement, at his news conference of October 22nd, see New York Times, October 23, 1959, page 12.

In brief, the sources of information available to us indicate that there is real basis for apprehension that the granting of an injunction will remove existing and rapidly mounting economic pressure upon all parties to settle their differences quickly, and thus be hurtful to the statutory objective of promoting a strike settlement by bargaining. And this is not counterbalanced by any indication that an injunction will in any way advance the bargaining process. Yet, it is the burden of the government which seeks an injunction from a court of equity to show that this relief seems likely to serve its intended purpose.

In my view the only way to avoid the foregoing analysis and its result is to say that the statutory scheme makes it the duty of the court to grant an injunction to halt an industry wide strike on the petition of the government whenever it appears that the national safety or health is being jeopardized. That is a possible scheme. Perhaps it is a desirable scheme. But as I read the Taft-Hartley Act it is not the scheme of the statute. I think Congress undertook a limited intervention of government to aid col-

lective bargaining, and, therefore, that a court should not act absent some showing that it will be aiding a negotiated settlement. That is a sufficient reason for denying injunctive relief here.

Finally, under the authority granted in Section 178 of Title 29, to issue "such other orders as may be appropriate," and guided in part by the manifest will of Congress that the court promote a negotiated settlement, I think it is within the equitable power of the district court, while refusing to enjoin the strike, to require the parties to follow such procedures as under the terms of the statute would be mandatory after an injunction. In this respect I disagree with the view of the majority that such procedures as the statute requires after an injunction are legally impossible without one. If they are reasonable ways of facilitating the settlement of the strike to which the court is addressing itself, I think the court in its discretion may require the parties to follow them without more. Indeed, we have already done as much by ordering that the parties proceed with collective bargaining while staying the order directing that they resume production. Particularly, I would have the district court order the parties to engage in continuing and persistent bargaining, to accept the assistance of the Federal Mediation and Conciliation Service and the Presidential Board of Inquiry and, if settlement should not result within sixty days, to permit the National Labor Relations Board to take a secret ballot of the employees of each employer involved on the acceptance or rejection of their employer's final offer of settlement. This much and no more is in my view an appropriate exercise of equitable judgment and discretion in the circumstances of this case.

Appendix B

Sections 206–210 of the Labor Management Relations Act of 1947, 61 Stat. 155, as amended, 29 U.S.C. 176–180, provide as follows:

Sec. 206. Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

Sec. 207. (a) A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

(b) Members of a board of inquiry shall receive compensation at the rate of $50 for each day actually spent by them in the work of the board, together with necessary travel and subsistence expenses.

(c) For the purpose of any hearing or inquiry conducted by any board appointed under this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U.S.C. 19, title 15, secs. 49 and 50, as amended), are hereby made applicable to the powers and duties of such board.

SEC. 208. (a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

(b) In any case, the provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", shall not be applicable.

(c) The order or orders of the court shall be subject to review by the appropriate United States court of appeals and by the Supreme Court upon

writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., Title 29, Secs. 346 and 347).

SEC. 209. (a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) Upon issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

SEC. 210. Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion

shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

U.S. GOVERNMENT PRINTING OFFICE 1959

No. 504

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

UNITED STEELWORKERS OF AMERICA,

Petitioner

v.

UNITED STATES OF AMERICA, *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR PETITIONER

ARTHUR J. GOLDBERG
DAVID E. FELLER
ELLIOT BREDHOFF
JERRY D. ANKER
1001 Connecticut Avenue, N. W.
Washington 6, D. C.
BERNARD DUNAU
912 Dupont Circle Building, N. W.
Washington 6, D. C.
Attorneys for Petitioner
United Steelworkers of America

INDEX

	Page
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Statute Involved	2
Statement of the Case	5
Summary of Argument	13
Argument	
I. THE FINDINGS OF THE DISTRICT COURT AS TO NATIONAL HEALTH AND SAFETY WERE BASED ON AN ERRONEOUS READING OF THE STATUTE AND WERE UNSUPPORTED BY THE EVIDENCE	19
A. Detriment to Economic Well-Being Is Not Relevant to Health	19
B. Peril to National Safety Which Emanates From a Shutdown of an Insubstantial Part of an Industry Does Not Suffice to Confer Jurisdiction Upon the District Court to Enjoin a Strike of Entire Industry	26
C. There Is No Peril to Health or Safety Even on the Government's Version of the Meaning of the Terms	33
II. THE JUDGMENT BELOW MUST BE REVERSED EVEN IF IT IS CONCEDED THAT THE GOVERNMENT HAS MET THE BURDEN OF PROVING THAT THE JURISDICTIONAL PREREQUISITES OF SECTION 208 WERE SATISFIED	45
A. The District Court Has Discretion Under Section 208	45

Page

B. The District Court's Failure to Consider the Factors Bearing on the Exercise of Its Discretion Was Error 49

C. The Affirmance by the Court of Appeals Was Based on an Erroneous Premise 51

D. It Would Not Have Been an Abuse of Discretion for the Trial Court to Refuse to Issue the Injunction Requested by the Government 51

III. THE 80-DAY INJUNCTION PROVISIONS OF THE STATUTE ARE UNCONSTITUTIONAL, AS THEY CONFER ON THE COURTS DUTIES WHICH ARE NOT JUDICIAL AND ARE NOT CONNECTED WITH ANY CASE OR CONTROVERSY 56

A. The Nature of the Statutory Scheme 57

B. The Constitutional Limitation 60

C. The Functions Vested in the District Court by Section 208 Do Not Meet the Constitutional Requirements 70

IV. THE PROCEEDINGS REQUIRED BY SECTION 208 REFLECT THE UNCONSTITUTIONAL NATURE OF THE FUNCTION VESTED IN THE DISTRICT COURTS 75

A. The "Findings" 76

B. The Order 79

C. The Procedure 81

Conclusion 82

Appendix A: The Availability of Special Steels Needed for Military Aircraft and Missile Purposes 83

Appendix B: The Kaiser Steel Corporation 92

Appendix C: Amounts of Coal Used for Health and Safety in 1948 and 1950 96

TABLE OF CITATIONS

Cases Page

Balaban & Katz Corp. v. Commissioner of Internal Revenue, 30 F. 2d 807 35
Boston Printing Pressmen's Union v. Potter Press, 141 F. Supp. 553, *aff'd*, 241 F. 2d 787, *cert. denied*, 355 U. S. 817 80
Butterworth v. United States, 112 U. S. 50 75
In re Debs, 158 U. S. 564 67, 73
Chicago and S. Airlines v. Waterman S.S. Corp., 333 U. S. 103 77
Douds v. Retail Store Union, 170 F. 2d 695 65, 66
Federal Radio Commission v. General Electric Co., 281 U. S. 464 75
Federal Radio Commission v. Nelson Brothers Co., 289 U. S. 266 75
Georgetown v. Alexandria Bridge Co., 12 Pet. 91 68
Gully v. First National Bank, 299 U. S. 109 69
Hecht Co. v. Bowles, 321 U. S. 321 48
Interstate Commerce Commission v. Brimson, 154 U. S. 447 63, 64, 74
Kohl v. United States, 91 U. S. 367 68
Application of Lurelle Guild, 204 F. 2d 700 35
Marine Transit v. Dreyfus, 284 U. S. 263 69
Mearns v. Harris, 45 App. D. C. 536 36
Morgan v. Daniels, 153 U. S. 120 75
Muskrat v. United States, 219 U. S. 346 63
National Mutual Insurance Co. v. Tidewater Transfer Co., 337 U. S. 582 57, 61
Pennsylvania v. Wheeling Bridge Co., 13 How. 518 68
Pope v. United States, 323 U. S. 1 66, 73
Prentis v. Atlantic Coast Line Co., 211 U. S. 210 63, 75
Sanitary District of Chicago v. United States, 266 U. S. 405 68
Ex Parte Siebold, 100 U. S. 371 66, 74
Textile Workers v. Lincoln Mills, 353 U. S. 448 69
Tutun v. United States, 270 U. S. 568 69
Ullman v. United States, 350 U. S. 422 68
United States v. United Mine Workers, 330 U. S. 258 24
United States v. United Steelworkers of America, 202 F. 2d 132; cert. before judgment denied, 344 U. S. 915 48, 49, 60, 81
Virginia Ry. v. System Federation, 300 U. S. 515 69
Youngstown Co. v. Sawyer, 343 U. S. 579 54

Statutes

Page

Defense Production Act of 1950, § 1, 50 U.S.C. App. § 2062 32
Defense Production Act of 1950, § 101, 50 U.S.C. App. § 2071 32, 42, 53
Defense Production Act of 1950, § 708, 50 U.S.C. App. § 2158 31, 53
Labor Management Relations Act, 1947, §§ 206-210, 29 U.S.C. §§ 176-180 60, 70
Labor Management Relations Act, 1947 § 208, 29 U.S.C. § 178 45, 47, 52, 57, 60, 70, 75, 81
Labor Management Relations Act, 1947, § 210, 29 U.S.C. § 180 47
National Labor Relations Act, § 8(d), 29 U.S.C. 158(d) 59
National Labor Relations Act, § 10(1), 29 U.S.C. § 160(1) 65
National Labor Relations Act, § 13, 29 U.S.C. § 163 73
Selective Service Act of 1948, § 18, 50 U.S.C. App. § 468 32, 51

Legislative Materials

H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess. 21
H.R. Minority Rep. No. 245, 80th Cong., 1st Sess. 58
Sen. Rep. No. 47, 81st Cong., 1st Sess. (1949) 72
H.R. 3020 (as reported), 80th Cong., 1st Sess., § 203(a) 21
H.R. 3020 (as passed in House), 80th Cong., 1st Sess., § 203(a) 21
H.R. 3020 (as passed in Senate), 80th Cong., 1st Sess., §§ 206, 209(a) 20, 21
S. 1126 (as reported), 80th Cong., 1st Sess., §§ 206, 209(a) 21
S. 249, 81st Cong., 1st Sess., 1949 (Thomas-Lesinski) 72

Miscellaneous

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Frankfurter & Greene, *The Labor Injunction* (1930) 74
New York Times, October 30, 1959 34
21 Fed. Reg. 5484 (July 21, 1956) 43

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR PETITIONER

OPINIONS BELOW

The District Court for the Western District of Pennsylvania issued only findings of fact and conclusions of law, which appear in the Record at pp. 244-48. The opinion of the Court of Appeals, which appears in the Record at pp. 286-310, is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on October 27, 1959. This Court has jurisdiction to review the judgment herein by writ of certiorari under 28 U.S.C. §1254(1) and Section 208(c) of the Labor Management Relations Act, 29 U.S.C. §178(c).

QUESTIONS PRESENTED

1. Whether, within the meaning of Section 208(a) ii , Title II, Labor Management Relations Act, 1947, detriment to economic well-being is comprehended within the statuto term "national health or safety."

2. Whether, within the meaning of Section 208(a), Title II, Labor Management Relations Act, 1947, peril to the "national . . . safety" which emanates from a shutdown of an insubstantial part of an industry suffices to confer jurisdiction upon the District Court to enjoin a strike of the entire industry.

3. (a) Whether the courts below applied the proper standard of proof for a finding that continuance of the steel strike will imperil the national health and safety.

(b) Whether, on any standards, the findings of the courts below can be sustained.

4. (a) Whether under the terms of Section 208 a , Title II, Labor Management Relations Act, 1947, the District Court has equitable discretion to determine whether to grant or deny an injunction;

(b) Whether the Court of Appeals can sustain the issuance of the injunction as an allowable exercise of discretion when the District Court exercised no discretion;

(c) Whether, assuming that the District Court did exercise its discretion, its action in enjoining this strike constituted an abuse of that discretion.

5. Whether the functions conferred upon the District Court by Section 208(a), Title II, Labor Management Relations Act, 1947, call for the exercise of nonjudicial powers in contravention of Article III, Section 2, of the United States Constitution or the doctrine of separation of powers.

STATUTE INVOLVED

Sections 206-210 of the Labor Management Relations Act of 1947, 29 U.S.C. §§ 176-180, 61 Stat. 155, provide, in part, as follows:

SEC. 206. Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

* * * *

SEC. 208 (a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

(b) In any case, the provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", shall not be applicable.

(c) The order or orders of the court shall be subject to review by the appropriate United States court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 29, secs. 346 and 347).

SEC. 209. (a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

SEC. 210. Upon the certification of the results of such ballot or upon a settlement being reached, whichever hap-

pens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

STATEMENT OF THE CASE

The petitioner, United Steelworkers of America, one of the defendants below, is a labor organization which is the certified or recognized collective bargaining representative of some or all of the nonsupervisory employees of each of the other named defendants in this case. These defendants are employers who operate mines, plants, ships, and other facilities relating to the production and fabrication of steel, and represent a substantial part — but not all — of an industry engaged in commerce, and the production of goods for commerce, among the several states and with foreign nations.

Prior to June 30, 1959, there were in effect between the Union and the employer defendants — as well as almost all other employers in the industry — collective bargaining agreements prescribing wages, hours, and other terms and conditions of employment, which agreements, by their terms, were to expire on June 30. (R. 12)

Early in May, the "key" negotiations for agreements began between the representatives of the Union and representatives of twelve of the largest employers. The companies first proposed to extend the contracts due to expire June 30 for one year, with the deletion of the existing provision for adjusting wage rates for changes in the cost of living. (R. 12) The union presented a great number of proposals, some of which necessarily varied as between

companies because of the differences in the individual company contracts. (R. 23) The basic economic issues, however, were substantially the same at each company. In June, the twelve companies proposed their own set of non-economic contract changes (R. 16) which again necessarily varied as between companies. No agreement was reached.

Shortly before the June 30th deadline, the parties, at the request of the President of the United States, agreed to extend the old agreements for two weeks. (R. 12) At the end of that period there was no settlement, and a strike of the more than 500,000 steelworkers began. Negotiations, with only short interruptions, have continued during the strike, and even during the course of this litigation. A settlement with one of the twelve largest companies, Kaiser Steel Corporation, was made on October 26, 1959. (R. 319)

A summary of the negotiations up to October 19 and the issues in dispute between the parties appears in the Report to the President of the Board of Inquiry, at pp. 11-33 of the record, and in the statement of President David J. McDonald to that Board, which is attached to Mr. McDonald's affidavit in this case and is part of the record herein. (R. 42-51)

In the opinion of Mr. McDonald, which appears in his sworn affidavit and which is uncontradicted in the record, the industry has steadfastly refused to settle the dispute on any reasonable terms because it anticipated the use by the Government of the Taft-Hartley emergency procedures to break the strike. (R. 40-41) Some of the differences in the issues in dispute as between different companies and units are indicated at pp. 17, 21-23 of the record.

On October 9, 1959, the President of the United States took the first step under the Taft-Hartley emergency procedures. He issued Executive Order 10843 (R. 9), appointing a Board of Inquiry, pursuant to Section 206 of the

Labor Management Relations Act. In this order, the President expressed the "opinion"—which, under the statute, he must do before acting under the emergency provisions—that the strike, if permitted to continue, would imperil the national health and safety. On October 14, the President, in Executive Order 10848 (R. 11), extended to October 19 the date upon which the Board was to report to him.

The Board submitted its report (R. 11-33) on the date it was due. This report, in accordance with the statute, dealt only with the collective bargaining issues in dispute between the parties. It made no finding or recommendation concerning the presence or absence of a threat to the national health or safety.

On receiving the report, the President directed the Attorney General to petition any district court having jurisdiction of the parties to enjoin the continuance of the strike and to order such other relief as might be necessary or appropriate. (R. 8)

On October 20 the present action was filed in the United States District Court for the Western District of Pennsylvania. (R. 1) By stipulation, all defendants waived service of process and submitted to the jurisdiction of the Court. They also stipulated that the case be determined on the basis of affidavits rather than oral testimony, and that it be submitted to the court upon final hearing. (R. 34)

At the trial, the following basic facts were found or undisputed. The strike had shut down approximately 85 percent of the steel producing capacity of the United States. (R. 244) The remaining 15 percent was still operating, either under extension agreements between the Union and the employers involved, or, in a few instances, because the employees involved are not organized or are represented by some other union (R. 98-102). Subsequent to the trial of this case, one of the struck companies who was a defendant below, Kaiser Steel Corporation, signed an agreement with the Union, settling the strike at that company. Conse-

quently, an additional 2 percent of the steel industry is now operating, and 83 percent is presently affected by the strike. By stipulation, the proceedings as to Kaiser Steel Corporation have been ordered to be dismissed. (R. 322)

Steel production prior to the strike was abnormally high in anticipation of the strike, and for the first nine months of 1959 total production was approximately 72.4 million ingot tons, as compared with a total of 85.2 million tons for the entire year 1958. (R. 103)

A large part of the Government's case was based on the allegation that the strike was affecting the economic well-being of the nation. The evidence with respect to this issue showed that as of the time of the hearing, unemployment attributable to the strike was 265,000, not counting strikers, and 765,000 including strikers (R. 246). It was found by the district court that if the strike were to continue through the balance of 1959 another 2½ months, strike-caused unemployment (apparently including strikers) would reach 3 million. (R. 246) Thus, assuming that finding to be correct, unemployment would be increased by approximately 2¼ million if the strike were to continue through December. Since total unemployment at the time of the hearing from all causes was slightly over 3 million (R. 103), total unemployment at the end of December would reach 5¼ million. In 1958, however, without any major strike, unemployment reached a peak of 5.4 million. (R. 108) There is no finding, and no evidence on the record which would support a finding, that the strike would last through December if the injunction were denied. But even if the strike should last that long, the findings indicate that the economy would not be affected as seriously as it was affected by the 1958 recession.

A considerable amount of evidence was presented concerning the effect of the strike on the national defense program. It was undisputed, however, that the total amount of steel consumed for defense purposes during the 18

months prior to the strike was never more than 1.2 percent of total production—which, in terms of tonnage, is approximately 5 percent of the capacity still in operation despite the strike. (R. 91) The court found that despite the fact that steel was still being produced at a rate many times as great as the rate at which the defense program consumes steel, certain steel products needed in connection with some aspects of the defense program were nevertheless presently unavailable because of the steel strike. (R. 246-47) The Union contended below—and will contend in this Court—that this finding was not supported by the evidence, but even if the finding be accepted as true, it means only that a very tiny fraction of the plants now on strike are necessary for the defense program.

On these facts, the District Court made the conclusory finding that the strike imperiled the national health and safety (R. 247), and issued an injunction. (R. 249-50) The court rejected the union's argument that the statute is unconstitutional because it authorizes the court to issue an injunction which does not enforce a pre-existing legal obligation, but merely creates such an obligation. The court did not pass on the Union's further argument that it should, in the exercise of its equitable discretion, refuse to issue an injunction in this case.

The union promptly filed an appeal (R. 251) and moved the district court for a brief stay to enable the Union to apply to Judge Staley of the Court of Appeals for the Third Circuit for a stay pending appeal. This was granted. (R. 253) Shortly thereafter, Judge Staley, on motion by the Union, granted a stay until 10 A.M. the following morning, or, if the union had by that time filed a motion before the Circuit Court, until further order of the Court. (R. 266)

On October 22, at 10 A.M., the parties appeared before the Third Circuit Court of Appeals in Philadelphia, on the Union's application for a further stay (R. 267) and appli-

cation for advancement of consideration of the appeal (R. 278). Chief Judge Biggs, and Judges Goodrich and Hastie comprised the court. At the suggestion of the court and with the agreement of the parties the appeal was heard on the merits at that time. The court continued the stay in effect, except as to paragraph 5 of the injunction, which directs the parties to bargain collectively and to attempt to settle their differences. (R. 282)

On October 27, the Court of Appeals issued a decision affirming the judgment of the district court, Judge Hastie dissenting. At the same time it issued a *per curiam* opinion (R. 318) which set forth the views of the other members of the court with respect to rehearing. Judges McLaughlin and Staley voted for rehearing. Judge Forman voted against. Judge Kalodner disqualified himself. The result was an equally divided court and no rehearing. On its own motion, the court continued the stay in effect until November 2, to permit aggrieved parties to petition for certiorari. (R. 318)

The opinion of the Court of Appeals began with a consideration of the constitutionality of the statute. Referring to the statement of purposes in section 1(b) of the Labor Management Relations Act, 29 U.S.C. § 141(b), the court concluded that one of the purposes of the act was "to bring an end to industrial strife which affects commerce to such a degree as to menace the general welfare." (R. 292) Thus, the court said, it is "tortious" to permit "a labor dispute to continue to the point where national health or safety is imperiled." (R. 292) The national emergency injunction, the court reasoned, is simply the method provided by the statute for remedying the "tort."

The court apparently relied as well on a somewhat different theory to sustain the constitutionality of these provisions. These sections, the court held, have to a limited extent revived the old "labor injunction" which the Norris-LaGuardia Act had destroyed. While the court considered

such an injunction, compelling employees to return to work, a form of "status judgment," it held that the entry of such a judgment is within the constitutional power of an Article III court, just as the review of administrative decisions is part of the judicial power. (R. 295)

Finally, the court held that the determinations which the statute requires a court to make before issuing an injunction is "specific enough and factual enough to bring the inquiry within the area of judicial decision as distinguished from legislative judgment." (R. 296)

The court then turned to the findings of fact made by the district court. It rejected the Union's argument that to justify the injunction the peril to the national health and safety must be present or imminent, stating that "the words of the Section speak to the future, *viz.*: 'If [the strike is] permitted * * * to continue [it] will imperil the national health or safety.'" (R. 300)

Relying on the affidavit of Dr. Raymond Saulnier, the court concluded that the effect of the strike on the defense program could not be remedied by opening a few plants, because the "steel industry is too vast and too complicated to be segmented so as to make such a desirable result practicable." (R. 300)

The court held that the affidavits submitted by the Government adequately supported the findings of the court below. Since the Government's witnesses were all cabinet officers or department heads, the court held that they were qualified to testify as experts and that their testimony was entitled to be weighed "in a different light from that of a witness who testifies that a motor car was or was not on a portion of the highway where it did not lawfully belong." (R. 301)

The difference between the affidavits submitted by the Union and those introduced by the Government, said the court, was largely a difference as to "avenues of approach. We find no variances in the affidavits basically material to

the findings made by the court below or to the issues with which we are immediately concerned." (R. 306)

Finally, the majority opinion considered the Union's argument that the injunction should have been refused in the exercise of equitable discretion, in order to facilitate a prompt settlement of the labor dispute in the public interest. The court conceded that a court of equity "of necessity must weigh" the fact that less drastic remedies were available to the Government, but held that "the danger is great enough and calls for a remedy as sweeping as the law will permit." (R. 308) Further, the court stated that one of the purposes of the emergency procedures is to set in motion certain administrative machinery—the Board of Inquiry, the last-offer ballot, etc.—designed to help settle the dispute, and that this machinery would not be available without the injunction. The court seemed to say that it would have affirmed a decision withholding the injunction as a matter of discretion, but that "we cannot say that in issuing the injunction the trial court abused its sound legal discretion." (R. 310)

Judge Hastie dissented. In his view, the primary purpose of the Taft-Hartley injunction "is not to force strikers to return to work but to facilitate a settlement of a serious industry-wide strike by collective bargaining," (R. 310-11) and that in this case, at least, the injunction would make a settlement more difficult. He therefore concluded that the district court should have denied the injunction as a matter of sound discretion.

In Judge Hastie's opinion, the Government had other adequate statutory powers to assure the continued production of goods needed for defense, with or without a strike, and that "it is reasonable to believe that some different purpose motivated the Congress in authorizing temporary injunctions under the Taft-Hartley law." (R. 312)

Neither the Government nor the industry had "shed any light on this critical question" of whether an injunction

would help or hinder a settlement, said Judge Hastie. "There is no suggestion that any tension or hostility would be relieved or any impediment to settlement removed by a suspension of the strike." (R. 313-14) The only evidence is the affidavit of David J. McDonald, and the attached public statements of George W. Taylor, Nathan P. Feinsinger, and W. Willard Wirtz, all of which tended to prove that a settlement could be negotiated if the injunction were denied.

Judge Hastie disagreed with the majority's view that an injunction against the strike was necessary to put the administrative machinery contemplated by the emergency provisions into operation. He interpreted the statute as permitting the court to order the parties to follow the procedures provided in the statute without at the same time terminating the strike. He pointed out that the court had, in effect, done so when it permitted paragraph 5 of the injunction to take effect while staying the other parts of the order. "This much and no more," he concluded, is "an appropriate exercise of equitable judgment and discretion in the circumstances of this case." (R. 317)

SUMARY OF ARGUMENT

I. The District Court had jurisdiction to issue an injunction in this case under Section 208 of the Act only if it properly found that the strike, if not enjoined, would imperil the national health or safety. The findings of the Court that peril to health and safety existed were based on a misreading of the statute and, even on that misreading, were unsupported by the evidence.

The District Court based its finding of peril to national health on the assumption that the term included economic well-being. But the language of the statute, as well as its legislative history, confirm the view that the term health was meant in its normal sense of physical health. To enlarge it to include economic well-being is to give the courts

a roving commission to determine impact on the general welfare. And this expanded version of health is an entirely new conception of the scope of the statute, as the Government has itself conceded.

The District Court based its finding of peril to safety upon an asserted shortage of special steel for certain defense needs. But it is incontrovertible that any shortage, if shortage there be, stems from a shutdown of a minute fraction of the industry, not a substantial part of it. There is no warrant for reading the statute as permitting an injunction against a strike in an entire industry on that basis. Section 208(a) requires a finding both that a strike affects an entire industry or a substantial part thereof *and* a finding that the strike, if permitted to occur or continue, will imperil the national health or safety. While it is possible to read the statutory language as if these two requirements were entirely unconnected, this would plainly do violence to the legislative intention. Congress did not permit an injunction to be issued against a strike in only a small part of an industry, even though that strike imperiled the national safety. It is inconceivable that it intended, therefore, that a peril of the same magnitude should be comprehended within the statute because it occurs as a small part of an industry-wide strike.

Even if the term "health" is enlarged to include economic health, and an injunction against an entire industry is authorized because of defense needs for the products of a tiny fraction of it, still the findings of the District Court cannot be supported. They are based entirely on affidavits which are conclusory in nature and unsupported by sufficient particularization of the subsidiary data necessary to justify and evaluate the conclusion. The findings are not based on evidence but upon an uncritical echoing of executive opinion.

II. The statute does not make the issuance of an injunction mandatory. The language of Section 208 it-

self is permissive only and contrasts strongly with the mandatory language in Section 210. Even were the language ambiguous, it should be construed in accordance with the tradition of equity practice as vesting discretion in the trial court.

The existence of discretion in the trial court was recognized by the Government in the American Locomotive case, *United States* v. *United Steelworkers*, 202 F. 2d 132 (2d Cir. 1953), although its brief in opposition in this Court seems to argue to the contrary. The Court of Appeals unanimously concurred in the view heretofore taken by the Government.

The trial court did not, in fact, attempt to consider the factors bearing on the proper exercise of its discretion but operated on the assumption that an injunction was mandatory if the judicial requirements set forth in the statute were satisfied. It ignored the argument of the union that the court had discretionary powers and overruled the conclusion of law proposed by the union to that effect. The failure of the district court even to inquire into the matters relevant to the proper exercise of its discretion was plain error since there were presented to it alternatives which it clearly should have considered and which it did not.

The Court of Appeals found that the court below, in the exercise of its sound legal discretion, might have decided either way on the question of whether an injunction should issue. It affirmed, however, on the theory that the action of the district court was within the permissible area of its discretion. In doing so, it clearly erred since the district court simply did not consider the case in terms of exercising equitable discretion.

The only basis on which the action of the trial court can be sustained here is that any action other than the one taken by it would have been an abuse of discretion. No such contention can, however, properly be made since

there are a number of factors which, had they been considered by the trial court, could have justified action other than the one which it took.

The first consideration is the one set forth in the dissenting opinion of Judge Hastie below—the fact that the refusal to enjoin the strike would, on the record made here, permanently terminate the assumed peril to the national safety, while the issuance of an injunction would not do so. The majority of the Court of Appeals expressly concurred in the view that such a determination would have been within the sound discretion of the trial court.

The second consideration bearing on the exercise of equitable discretion is the availability of other, and less drastic, methods, for obtaining the minute quantity of steel necessary for the national defense which was claimed by the Government not to be available from the plants now operating.

The final consideration which would have justified a differen result than the one to which the trial court came is the fact that an order directed to the particular producers of the specialty steels claimed to be required for the national defense would have met any peril to the national safety. Indeed, the availability of this much more limited remedy supports an argument that it would have been an abuse of discretion for the trial court to enter the broad order which it did in the light of the limited nature of the defense requirements. The view of the Court of Appeals that an injunction against the strike was necessary to trigger the administrative machinery provided for in Sections 209-210, even if correct, would be met by an injunctive order terminating the strike only at the plants necessary for the national defense.

III. Section 208 of the Taft-Hartley Act attempts to impose upon the federal courts duties which are not part of the judicial function of adjudicating justiciable con-

troversies. The structure and language of Sections 206-210 of the Act, and the relevant legislative history, make it clear that Congress specifically intended to repose in the federal courts, rather than in an administrative or executive agency, the function of ordering a strike to be broken, without creating any duty to terminate the strike. This was done deliberately. Congress did not want to provide a duty to postpone or interrupt a strike with which a union could comply without being enjoined. Nor did it wish to vest in any agency other than a court the function of directing that a strike be terminated. It specifically wanted a strike enjoined, despite the fact that the procedures it provided for the settlement of the labor dispute were exclusively administrative in character.

To thrust this function upon the federal courts constitutes a violation of Article III of the Constitution and of the doctrine of the separation of powers. There clearly are no rights or duties to be adjudicated in a proceeding under Section 208. Unlike statutes in which a duty can be implied from the statutory provision of a remedy, there is in this statute no obligation which a union can satisfy to avoid being enjoined. This demonstrates that the function given to the court by the statute is not the judicial one of adjudicating controversies but the executive or legislative function of creating a duty.

The Government argues that a statute would be valid if it provided that the President should first order the strikers back to work and then seek judicial enforcement of that order, and that the difference between such a statute and Sections 206-210 is merely a form of words. This argument, however, serves to underline the unconstitutional function given to the judiciary under the Act. It is hardly an answer to the claim that the statute vests an executive or legislative function in the judiciary to argue that the statute would be constitutional if that function had been vested in the executive. And the difference is a very real

one. If the obligation to terminate a strike is to be imposed in a particular case it should be the executive, or an administrative body, which imposes that duty, not a federal court.

Congressional committees have subsequently recognized the very real difference between a cooling-off period ordered by the President and one ordered by the courts through th injunctive process. The attempts in 1949 to meet the problem by amending the statute failed of passage.

The argument of the Court of Appeals that Congress merely reinstated the traditional labor injunction which was historically a "status" judgment is plainly erroneous. The labor injunction, even under the *Debs* case, always purported to rectify wrongs and violations of pre-existing rights. It did not declare status. The function given the district courts under Section 208 can, indeed, be analogized to the functions given such bodies as the National Labor Relations Board, as the court below did. But the functions given such administrative bodies cannot constitutionally be vested in Article III courts.

IV. The non-judicial nature of the function vested in the district courts by Sec. 208 finds its necessary reflection in the nature of the findings which the court must make, the kind of order it must issue and the procedure which must be followed. The findings are simply not judicial in nature since they must inevitably be based upon considerations not susceptible of judicial determination. In making its order the court must consider matters which are properly the subject for an economist or an arbitrator of contract terms. And the procedure which necessarily must be followed in attempting to impose on the courts the duty of making an executive or legislative decision does violence to every tradition of the judicial system.

ARGUMENT

I. THE FINDINGS OF THE DISTRICT COURT AS TO NATIONAL HEALTH AND SAFETY WERE BASED ON AN ERRONEOUS READING OF THE STATUTE AND WERE UNSUPPORTED BY THE EVIDENCE

Acquisition of jurisdiction by the District Court in this case, and its issuance of an injunction, were based upon two determinations made by it: (1) "national health" will be imperiled because the steel strike will idle workers and facilities dependent upon steel (R. 245-246; 247); (2) "national safety" will be imperiled because the shortage of certain steels affects the progress of certain defense activities (R. 246-247).

Each determination is based on a serious misreading of the statute. We shall show that detriment to economic well-being is not relevant to "health" in the statutory sense. We shall also show that peril to safety, if any there be, stems from a shutdown of a minute part of the industry, and this does not suffice to confer jurisdiction upon the District Court to enjoin a strike in the entire industry. We shall finally show that, even on the Government's version of the scope of the statute, there is no peril to national health or safety.

A. *Detriment to Economic Well-being Is Not Relevant to Health*

The District Court here concluded that "The national health will be imperiled if the strike is permitted to continue" (R. 247). This conclusion rests exclusively upon its subsidiary prediction that (*ibid.*):

> A continuation of the strike will have the ultimate effect of adversely affecting millions of small business enterprises, almost all of which are directly or indirectly dependent upon steel products and most of which

> lack the resources to stock large inventories. In addition, it will have the effect of idling millions of workers and a large proportion of the facilities in industries dependent upon steel for their continued operation. Manufacturing industries directly dependent on steel mill products account for the employment of approximately 6,000,000 workers and normal annual wages and salaries totalling approximately $34,000,000,000. The products of these industries are valued at over $125,000,000,000. The national health will be imperiled if the strike is permitted to continue.

This conclusion is obviously unrelated to "health" in the conventional sense of food shortages, impairment of hospital or medical care, lack of heating and sanitation, or the like. Nor is there anything in the record which bears at all on physical health. And it is singularly revealing that there is no affidavit from the Secretary of Health, Education and Welfare.

The conception of health embraced by the District Court and undisturbed by the Court of Appeals, is rooted instead in the view that the statutory term "health" embraces economic well-being. This is explicit in the opinion expressed by the President and in the affidavits of his subordinates. In convening a Board of Inquiry the President stated that "if production is not quickly resumed, severe effects upon the economy will endanger the *economic* health of the nation" (R. 10, emphasis supplied). The Secretary of Labor expressed his opinion that the "*economic* health of the nation is being endangered" (R. 173, emphasis supplied) and the Administrator of the Small Business Administration was similarly of the view that "the strike will seriously endanger the *economic* health of the nation . . ." (R. 184, emphasis supplied).

To expand the concept of "health" from physical to economic well-being departs from the ordinary meaning of the

word. And it is demonstrable that Congress used the word in its conventional sense.

The Senate bill, as reported and passed, was confined to peril to the "national health or safety."[1] The House bill, as reported and passed, extended to peril to "the public health, safety, *or interest*".[2] The Senate version prevailed in conference.[3] The rejection of the view that the statute should extend to national "interest" is emphasized by the colloquy on the floor of the House between Congressmen Kennedy and Owens (93 Cong. Rec. 3513, in 1 Leg. Hist. 669):

> "MR. KENNEDY. I believe that this country should certainly be in a position to combat a strike that affects the health and safety of the people. Therefore, I feel that the President must have the power to step in and stop those strikes. I am not in the position of opposing everything in this bill, but there are certain things in the bill that are wrong. I do not see how the President is going to have the power to stop strikes that will affect the health and safety of the people under the procedure listed in section 203. I think he must have that power.
>
> "I agree with you that any bill providing for an injunction should carefully consider the position of the striking union and make sure that their rights are protected. I think that in those cases Federal seizure until the dispute is settled would, perhaps equalize the burden in the fairest possible manner."

[1] S. 1126 (as reported), 80th Cong., 1st Sess. §§ 206, 209(a) (1 *Leg. Hist.* 146, 148); H.R. 3020 (as passed in Senate), 80th Cong., 1st Sess., §§ 206, 209(a) (1 *Leg. Hist.* 274, 276). "Leg. Hist." refers to the two volume edition of the *Legislative History of the Labor-Management Relations Act, 1947* (Govt. Print. Off., 1948).

[2] H.R. 3020 (as reported), 80th Cong., 1st Sess., § 203(a) (1 *Leg. Hist.*, 87-88); H.R. 3020 (as passed in House), 80th Cong., 1st Sess., § 203(a) (1 *Leg. Hist.*, 214-215).

[3] H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 64, in 1 *Leg. Hist.* 568.

"MR. OWENS. Will not the gentleman admit that we have a third word in there? It is 'interest.' Could we not better use the word 'welfare' instead of 'interest,' because the word 'welfare' occurs in the Constitution? It is just as broad as the word 'interest' and more practical.

"MR. KENNEDY. The proposal embraces two separate things, health and safety. Because the remedy is drastic these two, in my opinion, are sufficient. I believe we should apply this remedy when the strike affects health or safety, but not the welfare and interest, which may mean anything. I would not interfere in an automobile strike, because while perhaps that affects national interest, it does not affect health and safety.

"MR. OWENS. Does not the gentleman agree that 'welfare' is the stronger and in line with the President's idea?

"MR. KENNEDY. No. Both 'welfare' and 'interest' are too indefinite. They could cover anything. I would not have the law apply except in cases where the strike affected health and safety."

The Government contends that emphasis upon the omission of the word "interest" from the Senate bill overlooks another difference between the House and Senate bills which argues against a narrow reading (Govt. br. p. 48, n. 26, 2d Par.). The House bill, the argument runs, was limited to "transportation, public utility or communication services," while the Senate bill applied to any industry engaged in trade or the production of goods for commerce. This expanded coverage, it is urged, is "hardly consistent" with a reading of "national health or safety" to exclude the concept of "interest." But expansion in coverage is itself a decisive reason in favor of a cabined view of the type of impact that would be within the statute's reach. For, so long as the statute's scope was limited to the three

enumerated industries, it would only be within that confined compass that impact in terms of "health, safety, or interest" would be measured. But once the area of coverage was widened to include "an entire industry or a substantial part thereof" in any field, it was no longer feasible to retain an equally wide view of the scope of the impact which the statute would embrace. For the combination of a wide area of coverage and a wide scope of impact would place the District Court in the role of overseer of the national economy. Congress was not ready to put the district courts in that business.[4] As Senator Taft emphasized in explaining the measure, in addition to the requirement of a strike "affecting substantially an entire industry," there is "the additional requirement that such strike imperil the national health or safety, *a condition which, it is anticipated, will not often occur.*" 93 Cong. Rec. 6860 (in 2 *Leg. Hist.* 1625) (Emphasis added.)

[4] The Government would buttress its view by pointing to the policy statement which introduces the whole of the Labor Management Relations Act, 1947, and which reads in part that "neither party has any right in its relations with any other to engage in acts or practices which jeopardize the *public health, safety or interest.*" (Govt. br. p. 47, n. 26, emphasis supplied.) The use of the word "interest" in a policy statement which covers five titles of a statute, of which the presently relevant sections 206-210 are a small part, is hardly a basis for expanding that small part, particularly since the word "interest" is a perfectly apt generality by which to describe the policy underlying provisions other than sections 206-210. Thus, if anything, the omission of the word "interest" from sections 206-210 implies that those sections were deliberately designed to be narrower in scope.

It is also interesting to note that the policy statement refers to "public health." According to the Government, the adjective "public" is the appropriate way to confine the term "health" to "*physical* health" (Govt. br. p. 47). Since the Government states that the meaning of the substantive provision is to be read in the light of the policy statement, and since the policy statement according to the Government's understanding of the use of terms is limited to physical health, it follows on the Government's own argument that the term "health" in sections 206-210 is confined to physical health.

To adopt the Government's freewheeling concept of peril to the general welfare is also to revive the full vigor and egregiousness of the labor injunction as it existed in the days before the Norris-La Guardia Act and as it is epitomized by *In re Debs,* 158 U. S. 564, 584. This is indeed the Government's avowed aim (Govt. br. pp. 28-29, 37). But it is hardly an aim which can be attributed to Congress. "It would mean that, in order to protect the public interest, . . . a court could, at the behest of the Attorney General of the United States, issue an injunction as courts did when they issued the *Debs,* the *Hayes* and the *Railway Shopmen's* injunctions. But it was these very injunctions, secured by the Attorney General of the United States under claim of compelling public emergency, that gave the most powerful momentum to the enactment of the Norris-La Guardia Act. This history is too familiar to be rehearsed." Mr. Justice Frankfurter in *United States* v. *United Mine Workers,* 330 U. S. 258, 315.

It would be no answer were the Government to say that Congress has expressly lifted the limitations of the Norris-La Guardia Act for the purpose of sections 206-210. The question is the extent to which the restrictions have been removed. To claim that peril to the general welfare is now the criterion is to say that Congress abandoned all substantive limitations. The memory of the abuse was still too searing in 1947 to suppose that a short fifteen years after its enactment in 1932 Congress had forgotten so much of the history which preceded the Norris-La Guardia Act as to resurrect one of the foremost evils which led up to it.

Nor would it be an answer were the Government to say that the safeguard that Congress preserved was to limit the injunction to 80 days. An 80 days injunction in a labor dispute is ordinarily for all practical purposes a permanent injunction in relation to the dispute to which it is applied.

Although made to support its conclusion that the statute

was constitutional, the observation of the Court of Appeals is particularly pertinent on the question of statutory construction. "[C]ontrasting the statute as enacted with the House proposal which was rejected," the Court of Appeals stated that (R. 295-296): "The House would have called upon a district court to act whenever in its judgment the public interest was imperiled. This would have left the court at large in deciding the expediency of action guided only by statesmanlike conception of the public welfare. But, as enacted, the statute requires decision whether the evidence adduced in a case shows serious interference with essential national defense activities or threatened impairment of public health." Congress did not, as the Government would have it, give the District Court a roving commission to determine impact on general welfare.

The reading which we urge is supported, finally, by the fact that the industry which was most in the Congressional mind and which alone was cited in the committee report on the Senate bill, was coal. S. Rept. 105, 80th Cong., 1st Sess. p. 14. And the coal industry is one which the statutory description, as we read it, fits like a glove. The effect of a cessation of coal production is primarily related to physical, rather than economic, health and safety. See Appendix C.

To expand the scope of the statute to include economic well-being is also an entirely new conception. As the Government conceded on argument below, "in all of the [fourteen] prior cases under Taft-Hartley, the Government proceeded on the single-barrel basis of the effects upon critical items needed for defense. In this case we are proceeding also on the other basis, the effect on the national economy, as well" (Transcript of oral argument in the Court of Appeals, p. 105). This new basis is premised on a misreading of the statute, and the finding of peril to health, which is based on that same misreading, clearly does not meet the statutory prescription.

B—*Peril to National Safety Which Emanates From a Shutdown of an Insubstantial Part of an Industry Does Not Suffice to Confer Jurisdiction Upon the District Court to Enjoin a Strike of the Entire Industry.*

The District Court found peril to the "national safety" based on its determination that a shortage of certain steels existed and this shortage adversely affected the progress of certain defense activities (R. 246-247). We do not, of course, contest the proposition that defense needs are pertinent to a determination of peril to national safety. But, in this case, any peril to national safety, assuming for the moment that one was properly proved to exist here (see part C below), arises from a shutdown of a tiny fraction of an industry. Such a shutdown does not suffice to confer jurisdiction upon a District Court to enjoin a strike in the entire industry. Any other view requires the conclusion that a danger created by a strike of 5,000 employees empowers a district court to require 500,000 to return to work.

It is uncontroverted in the record that 63 steel mills throughout the country are still in operation, unaffected by the strike, and account for 15.36 percent of the total steelmaking capacity in the United States (R. 99-102). To this should be added the two percent steelmaking capacity of the plant of the Kaiser Steel Corporation which has been reactivated as a result of the settlement reached between the Union and the Company. It is also uncontroverted that steel requirements for all defense purposes constitute a minute fraction of steel produced. Thus, in no quarter since 1958 have mill shipments for defense purposes exceeded 1.2 percent of total mill shipments; for the entire year and a half ending mid-1959, shipments for defense purposes accounted for less than one percent of total shipments (R. 91). This quantity is less than five percent of the productive capacity of the steel mills currently in operation; in the aggregate, the current level of steel output is some twenty times as large as defense requirements. *Ibid.*

The District Court found that "Certain items of steel required in top priority military missile programs are not made by any mill now operating, nor available from any inventory or from imports" (R. 246). This finding repeats in so many words the unparticularized statement in the affidavit of the Secretary of Commerce (R. 162). Neither that affidavit, nor any other, specifies the type or quantity of such steel, the closed plants at which they are produced, or the number of such plants which would have to be reactivated to fill the need. Industry and governmental sources, of which this Court may take judicial notice, show that virtually every type of specialty steel necessary for defense purposes is or can be produced by nonstruck mills, and that the nonstruck mills, although accounting for 15.36 percent of the total steelmaking capacity, actually account for 35.04 percent of electric steel furnace capacity. Almost all high quality alloy steels—which are the special steels required for defense purposes—can be made in electrical steel furnaces now operating. In the case of the highly vital vacuum melted steels (see R. 196), 20 of 23 companies utilizing this process are not on strike. See Appendix A.

But even if specialty steel requirements for defense cannot be fully met from nonstruck mill capacity, the unavailable quantity is exceedingly small. The total steel requirements of all kinds for defense purposes do not exceed 1.2 percent (R. 91). Specialized steel requirements must constitute a fraction of that 1.2 percent. And the fraction of that fraction which cannot be supplied by the plants now working must be minute indeed. We cannot know how minute because the Government has not informed the Court, or the parties, what kinds of steel it lacks, how much of it, or what plants make it.

It is this central and indisputable fact which exposes the fundamental statutory misconception upon which the finding of peril to national safety rests. For, assuming the ad-

equacy of the finding of peril to the national safety, missing is the indispensable companion finding or basis for one that this peril is the consequence of the shutdown of a substantial part of the industry. To acquire jurisdiction to issue an injunction, Section 208(a) requires that the District Court make two findings, namely, that the "threatened or actual strike or lock-out" (1) "affects an entire industry or a substantial part thereof" *and* (2) "if permitted to occur or to continue, will imperil the national health or safety." While it is possible to read the statutory language as if these two requirements were entirely unconnected, this would plainly do violence to the legislative intention. Congress did not permit an injunction to be issued against a strike in only a small part of an industry, even though that strike imperiled the national safety. It is inconceivable that it intended, therefore, that a peril of the same magnitude should be comprehended within the statute because it occurs as a small part of an industry-wide strike.

Unquestionably the steel strike affects a substantial part of the industry. But it is not continuance of the strike in a substantial part of the industry which imperils safety. At most, it is only continuance of it in that handful of mills necessary to produce specialized steel that can be said to do so. By no latitude of interpretation can that handful be described as a "substantial part" of an industry comprised of 310 steel plants on strike (R. 172), and 63 non-struck steel companies (R. 99-102), themselves operating several hundred hot rolling mills (R. 123).

The error in the Government's reading of the statute is confirmed by comparing the steel industry with the industry upon which Congress primarily focused in enacting it: coal. S. Rep. No. 105, 80th Cong., 1st Sess., 14, in 1 Leg. Hist. 121. In the coal industry, unlike steel, a substantial part (indeed a majority) of the total production is used for purposes directly affecting health and safety. See Appendix C to this brief. When Congress, looking at the coal in-

dustry, limited the injunctive remedy in the way that it did it surely did not mean to cover every industry, regardless of the proportion of its products which are related to health or safety.

Furthermore, unlike the coal industry, there are in steel separate collective bargaining agreements at least equal in number, and separate collective bargaining units which far exceed in number, the 95 employer defendants in this case. Nor is there a single dispute. There are at least as many disputes as there are employer defendants, and while there are issues common to the disputes, there are differences among them as well.[5] Nothing prevents individual companies from separately settling their disputes with the Union—as some have done. It is unthinkable, therefore, that where the peril, if there be any, emanates from the disputes at an insignificant number of these companies, the statute empowers the District Court to bring to a standstill the strike in the whole of the industry. Congress did not arm the District Court with an elephant gun to bring down a gnat.

The Court of Appeals does not meet this argument directly but makes certain statements which are relevant to it. It relied upon the affidavit of Dr. Raymond J. Saulnier, Chairman of the Council of Economic Advisers, to support the view that "a selective reopening of a small number of mills to meet national defense needs" is not practicable (R. 300-302). This affidavit, it may be noted, is not a statement of facts in the testimonial sense, but an advocate's argument on behalf of a cause.

Dr. Saulnier makes three points. First, he quotes from the Business and Defense Services Administration that "to satisfy defense requirements" "it would be necessary to reactivate 25 to 30 hot rolling mills together with supporting facilities, and this "would be totally impracticable" (R.

[5] For some of the differences, see R. 17, 21, 23.

196). However, a single integrated plant can and often does comprise 25 to 30 hot rolling mills and supporting facilities. This is essentially the situation with respect to the reactivated Kaiser plant, and there was nothing impractical about reopening it. (R. 319. See also Appendix B to this Brief).

The only impracticality identified by the Business and Defense Services Administration is that it would not be feasible to reopen the plant "to meet only defense requirements . . ." (R. 196). But there is nothing to say that the plant could not be opened for all purposes—civilian and defense production. Surely it is not less practical to reopen one plant for all purposes rather than to reopen all 310 plants for all purposes, when the sole justification for reopening any struck plant is a minute amount of specialty steel needed for defense purposes. The statement of Robert R. Nathan in his affidavit stands quite unrefuted that specialty steel for defense "could certainly be produced in a very small number of mills which might be reopened to assure the availability of such special items" (R. 92).

The second point that Dr. Saulnier makes, relied upon by the Court of Appeals (R. 301), is that "Obtaining adequate supplies of . . . essential civilian items of steel, like obtaining steel for defense purposes, would clearly require the opening of more than just a few mills" (R. 197). But the record does not establish any shortage of "Essential civilian items of steel." Quite to the contrary (R. 69-91[6]). This consideration is therefore irrelevant.

The last point made by Dr. Saulnier, relied upon by the Court of Appeals (R. 300-301), is that "even if it were tech-

[6] In an apparent attempt to refute this, the Government's brief quotes Dr. Saulnier's affidavit, which in turn summarizes the view of unidentified "experts" (Govt. br. p. 50, n. 27). But no affiant testifies to essential civilian shortages, and there is no finding of fact that such essential civilian shortages exist.

nically possible to resume steel production on this selective basis, to do so would be exceedingly uneconomic and wasteful," and "would be offensive to the public conscience, as well as to the public interest" (R. 197). We have shown that there is nothing uneconomic or wasteful in reopening one or a few plants for all purposes, and nothing which precludes it. This aside, what is truly "offensive to the public conscience, as well as to the public interest," is to force over 500,000 workers to return to work against their will, and to set at nought the immense sacrifices they underwent in exercising their right to strike. Especially is this so when all that is in the balance on the other side is presumed waste and inefficiency.

It is thus clear that any peril to defense (if peril there be) arises from a shortage of certain specialty steels (if shortages there be) producible in a handful of struck mills (if indeed it cannot all be acquired from mills now in operation). All danger to defense arises at best from a shutdown of a few mills and can be averted by reopening these mills. This situation fails to meet the statutory test for vesting the District Court with jurisdiction: namely, that a shutdown of a *substantial* part of an industry imperils safety. The District Court acquires no jurisdiction to enjoin a strike in the whole of an industry because of danger which emanates from the shutdown of an insubstantial part of it.

Nor can the Government plead that this interpretation of the statute leaves it helpless to meet the peril. First of all, the Government has never asked the Union or any steel company to reactivate any plants necessary for defense, and there is not the slightest reason to suppose that either would be deaf to such a request. In fact, the Union has cooperated to remove steel from struck mills required for defense purposes (R. 106-107, 111-116). And reactivation of particular plants by consent is a procedure comprehended by Section 708 of the Defense Production Act of 1950 which provides that (50 U.S.C. App. § 2158):

> "The President is authorized to consult with representatives of industry, business, financing, agriculture, labor and other interests, with a view to encouraging the making by such persons with the approval by the President of voluntary agreements and programs to further the objectives of this act."

Since the "objectives of this act" are "to provide for the national defense and national security" (50 U.S.C. App. § 2062), it is clearly within the contemplation of that Section for the President to "encourage" management and labor to make some arrangements whereby production of essential defense materials would be continued despite the existence of a labor dispute.

Secondly, if compulsion is necessary, the President has the power under the Defense Production Act of 1950 "to require acceptance or performance" of defense contracts or orders in preference to other nonessential orders, and "to allocate materials and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense." (50 U.S.C. App. § 2071.) Furthermore under Section 18 of the Selective Service Act of 1948, 50 U.S.C. App. § 468, the Government is authorized to place orders for materials the procurement of which has been authorized by Congress for the exclusive use of the armed forces or the Atomic Energy Commission. Any person receiving such an order has a legal duty to fill it within the time period prescribed by the order or as soon thereafter as possible. If he fails to do so,

> "the President is authorized to take immediate possession of any plant, mine or other facility of such person and to operate it, through any Government agency, for the production of such articles or materials as may be required by the Government."

See Mr. Justice Clark in *Youngstown Co.* v. *Sawyer*, 343 U. S. 579, 663, 664-666 and n. 14.

There is, accordingly, no statutory foundation for an injunction against a strike in an entire industry based upon peril emanating from a shutdown of a minute part of it.

C.—*The Findings of the District Court as to the Peril to Health or Safety Are Unjustified Even on the Government's Version of the Meaning of the Terms.*

We have shown that detriment to economic well-being is not relevant to "health." We have also shown that peril to "safety" which emanates from a shutdown of an *insubstantial* part of the industry does not suffice. There is therefore no peril to national health or safety within the meaning of the statute. We now show that, even in the Government's version of the meaning of the terms, no danger to either can properly be said to exist on the basis of the record here.

Section 208(a) requires a finding by the District Court that a "threatened or actual strike or lock-out . . . if permitted to occur or to continue, *will imperil* the national health or safety" (emphasis supplied). The words "will imperil" bespeak futurity and necessarily entail a prediction of the consequences of the occurrence or continuance of a shutdown. But, while the statute requires protection, it looks to imminent consequences, not to prophecies of distant or even intermediate effects. The word "peril" itself implies immediacy and imminence. Any different view is inconsistent with the concept of "national emergency." And to look to other than near-term consequences requires the capacity of a seer, not a judge.

Not only must the consequence be imminent, it must also be grave. It is not enough, as the Government seems to suggest (Govt. br. pp. 12 and n. 7, 13, 17, 24), to have a "detrimental," "adverse," or "appreciable" effect. It

is *peril* which is the standard. Danger is the criterion. As Judge Hastie correctly observed (R. 311, n. 1), the statute is premised on peril "imminently and seriously" apprehended.

The District Court found, in the statutory language, that "The strike, if permitted to continue, will imperil the national health and safety . . ." (R. 248). The finding rests upon evidence which is conclusory in nature and unsupported by a sufficient particularization of subsidiary data necessary to justify and evaluate the conclusion. The vice of an unsubstantiated conclusion is especially apparent where, as here, the affiant stating the conclusion cannot be basing it upon his own knowledge of the underlying data but must himself be relying upon reports from his subordinates or others. Thus the Acting Secretary of Defense vouchsafes "the opinion of those persons in the Armed Services who have the greatest knowledge of these matters" (R. 168); the Deputy Administrator of the National Aeronautics and Space Administration bases his information on "regular and periodic reports" received by him (R. 175); and the Chairman of the Council of Economic Advisors reports "facts . . . noted by experts intimately acquainted with the current situation" (R. 197).

The failure to particularize the data supporting the conclusion not only disables the finder from knowing and evaluating the facts, but it also detracts from the worth of the conclusion because it has been made without the discipline which comes from carefully marshaling that data. The affiant may indeed discover, were he under the compulsion of adequate particularization of the basic data, that he has been acting on the basis of an unverified impression rather than fact.[7]

[7] While we of course do not rely upon it to establish any fact material to this case, our point is illustrated by a news report in the New York *Times*, October 30, 1959, p. 12, cols. 6 and 7:

> The Government contends that a steel shortage is hurting

The vice is deepened when the affiant avowedly expresses his opinion and the basis for his value judgment is the unparticularized information he received from others. Opinion evidence is admissible and to a degree unavoidable in a proceeding of this kind. But as in any proceeding, so here, "opinion evidence, to be of any value, should be based upon admitted facts or upon facts, within the knowledge of the witness, disclosed in the record. Opinion evidence that does not appear to be based upon disclosed facts is of little or no value." *Balaban & Katz Corp.* v. *Commissioner of Internal Revenue*, 30 F. 2d 807, 808 (C.A. 7).

One last preliminary point should be made. The governmental affiants are in effect parties to the action and their *ex parte* representation must be evaluated in the light of their partisan interest. *Cf. Application of Lurelle Guild*, 204 F. 2d 700, 703-704 (C.C.P.A.). Their affidavits can be assumed to have been carefully constructed so as to state the most that can be stated in support of the Government's position. They were executed after the Union had publicly stated, before the Board of Inquiry, that it would contest the issue of health and safety and after the Union had made available to the Government, through the Board of Inquiry, the proof which it proposed to submit in sup-

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defense production and otherwise causing an emergency. But qualified sources at the Pentagon said the steel strike had had no impact on the defense program so far.

This observation was made in the face of contrary public statements by Secretary of Defense Neil H. McElroy and other high officials.

Secretary McElroy said in New York yesterday that strike-induced steel shortage was causing delays in production in "certain essential areas, such as missiles."

In Mr. McElroy's department, however, competent officials said that so far nothing had been slowed. These officials said the first expected pinch that concerned them was a shortage of steel plates for submarine construction. That shortage, they said, was at least a month away.

port of its contention. Under these circumstances, the affidavits must, we believe, be constructed strictly against the Government. Where ambiguous language is used, and there is a failure to state specifically what the Government obviously desired to have stated for the purpose of this law suit, it must be assumed that the absence of such a statement occurs only because the statement required by the Government could not be made. Cf. *Mearns* v. *Harris*, 43 App. D.C. 536.

There is contained in the record, in the application for further stay below (R. 271-273), a detailed analysis of the ambiguities, omissions and non-sequiturs in the Government's affidavits. We will not repeat that analysis here. It is sufficient to say simply that, in this entire record, there is not one piece of straightforward and precise evidence which says "Steel of Type XYZ (or plates so many inches wide, etc.) is necessary for the production of a named missile (or a submarine, etc.) and is not available because of the steel strike."

This omission is particularly significant when it is noted that it does not follow from the fact that an isolated metal is normally made only by a struck company that such metal is in short supply for defense purposes. In the case of most specialty steels, a particular item which is normally produced only by struck mills can in fact be produced in alternative facilities now operating. In other cases, steels having essentially the same properties can be substituted. The data supporting this conclusion are set forth in Appendix A.[8]

[8] In the light of this understanding, a statement, such as that contained in the Gates affidavit (R. 169) that "the steel specified in the procurement contracts" for a missile is not common to commercial usage should not be confused, as the Government's brief does (p. 12), with a statement that such steel cannot be obtained because of the strike or that failure to obtain the "specified" steel because of the strike will affect the production of the missile. Nor, we believe, should statements as to shortages and delays not specifically

The infirmity in the evidence incurably infects the findings of fact upon which the District Court relies for support of its ultimate conclusion of peril to national health and safety. Some findings are inadequate on their face; others fail for insufficient support in the evidence. None establish a cogent and imminent peril to national health and safety.

1. The District Court first found that (R. 246):

> Certain items of steel required in top priority military missile programs of the United States are not made by any mill now operating, nor available from any inventory or from imports. Any further delay in resumption of steel production would result in an irretrievable loss of time in the supply of weapons systems essential to the national defense plans of the United States and its allies.

The first sentence repeats the identical statement in the affidavit of the Secretary of Commerce (R. 162). The statement is totally unsubstantiated. And, as we have shown above, data of which the Court may take judicial notice show the absence of a firm basis for the statement.

The second sentence of the finding repeats the identical statement in the affidavit of the Acting Secretary of Defense (R. 168). The "weapons systems" referred to in that affidavit are the "Three basic ballistic missile weapon systems . . . [known as] the ATLAS, TITAN, and POLARIS" (R. 169). The affidavit enumerates a number of instances, existing or anticipated, of delay in meeting completion dates of particular phases of the programs (R. 169-170).

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ascribed to the steel strike (R. 169-170) be assumed, as the Government's brief assumes (p. 12), to be the equivalent of statements that the shortages and delays are due to the strike. There is a strike. There undoubtedly have been shortages and delays in the missile program. One cannot be assumed necessarily to follow from the other.

But the affidavit does not state the relationship of the delayed phases of the program to the whole of the program. For example, it states that "delays in construction schedules of two to three months are anticipated at four major launching sites" (R. 170). It does not state, however, how many launching sites are presently in readiness, nor the importance of the addition of these four to over-all effectiveness. And, while it states that two to three months' delay is anticipated, it does not state whether the construction schedule calls for completion one, two or three years hence. A two month delay in a project not to be completed for three years would not seem to be perilous.

The District Court must find peril to safety. But it can only find it by taking on faith the opinion of the Acting Secretary of Defense. The District Court must take on faith both the fact of serious and imminent peril to the missiles program and the fact that the missiles program is so interrelated to over-all defense needs that peril to one is danger to the other. There is no basis in the Acting Secretary's affidavit from which the District Court can determine for itself that a number of delays in certain phases of the missiles program imminently and gravely imperil safety.

2. The second finding of fact of the District Court is that (R. 246):

> The planned program of space activities under the direction of the National Aeronautics and Space Administration has been delayed by the strike and will be further delayed if it is continued. Specifically, project MERCURY, the nation's manned satellite program, which has the highest national priority, has been delayed by reason of delay in construction of buildings essential to its operation. This program is important to the security of the nation. Other planned space programs will be delayed or threatened with delay by a continuation of the strike.

This finding is based on the affidavit of the Deputy Administrator of the National Aeronautics and Space Administration. (R. 174-177). The space activities described are unrelated to defense. They pertain to research into exploration of space. As the affidavit states, the National Aeronautics and Space Administration is responsible under its statute "for planning, directing, and conducting 'aeronautical and space activities' sponsored by the United States, *except* that such activities 'peculiar to or primarily associated with the development of weapons systems, military operations, or the defense of the United States' are the responsibility of the Department of Defense" (R. 174, emphasis supplied). And, as the affidavit further states, "'aeronautical and space activities' is defined" by the statute as meaning "'(A) *research into*, and the solution of, problems of flight within and outside the earth's atmosphere, (B) the development, construction, testing, and operation *for research purposes* of aeronautical and space vehicles, and (C) such other activities as may be required for the exploration of space'" (R. 174, emphasis supplied). Delay in research into space is unfortunate, but it will hardly support a finding of peril to the national safety. The Court may take judicial notice that space research has been and is retarded by factors far more significant than the steel strike.

3. The third finding made by the District Court is that (R. 246-247):

> Nuclear Submarines and the naval shipbuilding program other than submarines, including new construction, modernization, and conversion, have been affected by reason of the inability to secure boilers, compressors, and other component parts requiring steel. Products of the steel industry are indispensable to the manufacture of such items and delay in their production will irreparably injure national defense and imperil the national safety.

This finding is a paraphrase of the equally unparticularized statement in the affidavit of the Acting Secretary of Defense (R. 170). It is clear on the face of the finding that the adverse effect described in it cannot be attributed to the steel strike. The first sentence of the finding states that it is "inability to secure boilers, compressors, and other component parts requiring steel" which is the cause of the difficulty. But there is nothing in that sentence, or in the next one, which ascribes that inability to the steel strike. For ought that appears, either in the finding or the affidavit, the inability may be due to a strike of employees making "boilers, compressors, and other component parts," or to reasons wholly unrelated to labor disputes. It is undoubtedly true, as the second sentence of the finding states, that "Products of the steel industry are indispensable to the manufacture of such items," and it may be true that "delay in their production will irreparably injure national defense and imperil the national safety," but it does not follow from either or both of these statements that the steel strike is the cause of the difficulty.

Furthermore, all that the finding states is that certain activities "have been affected. . . ." But it is not "affect" which must be found. It is *peril* which is the standard. And the peril must be imminent and clearly manifest, not remote and uncertain.

4. The fourth finding of fact made by the District Court is that (R. 247):

> Exported steel products are vital to the support of United States bases overseas and for the use of NATO allies and similar collective security groups. The steel strike, if permitted to continue, will seriously impair these programs, thus imperiling the national safety.

This finding is a strengthened paraphrase of a bare conclusory statement to the same effect in the affidavit of the Secretary of Commerce (R. 163). There is nothing in

this finding which even intimates that the exports pertain to overseas defense efforts. If they did, we should expect the matter to be the subject of an affidavit by the Secretary of Defense, not Commerce, and it is singularly revealing that the affidavit of the Acting Secretary of Defense is silent on the subject (R. 168-171). Exports unrelated to defense in which the United States has a governmental interest pertain to political or economic affairs. Adverse effect upon these affairs, if any there be, cannot be said to imperil the national safety in the imminent and exigent sense that the statute requires.

5. The Court of Appeals (R. 305-306) and the Government (Govt. br. p. 13) rely upon the affidavit of the General Manager of the Atomic Energy Commission. The District Court, on the other hand, made no finding of peril to safety emanating from interference with atomic energy programs caused by the steel strike. Indeed, the Government proposed (R. 204), petitioner objected to (R. 220, 223-224), and the District Court declined to find that "The strike has interrupted the flow of steel for such uses as . . . atomic reactors for naval propulsion." And the reasons for not finding detriment to atomic energy programs seem evident. For the affidavit states that supplies have not "been materially affected by the steel strike . . . up till now"; delays which have occurred are "so far of a minor nature"; and only if "the strike continues into early 1960," would there "be an appreciable effect upon the weapons program" (R. 178-179). One prediction which may confidently be made is that, if no injunction is issued, the strike will be settled well before 1960 (R. 40-41).

6. The lack of any genuine shortage of steel for defense needs is cogently evidenced by the uncontroverted fact that the Government itself has not regarded the effect of the steel strike to be sufficiently serious to invoke the powers which it has to assure itself of an adequate supply of steel for defense purposes from existing inventory and

from productive capacity of non-struck mills. The Defense Production Act of 1950 empowers the President or his delegate to establish priorities and allocate materials needed for defense.[9] The Government through the Business and Defense Services Administration, its agency for this purpose, has not yet utilized its full power under this statute. On July 20 and 28, within two weeks after the beginning of the strike, the BDSA simply announced through two releases that it had taken certain steps to keep itself informed of the steel situation, that it had formally reminded the nonstruck companies of their responsibilities under the law, and that additional steps would be considered if the strike continued (R. 106, 109-110). The BDSA did nothing further until October 16, one week after the President convened the Board of Inquiry. On that date the BDSA issued an order accelerating the delivery of steel for defense purposes by struck companies upon resumption of operations and by nonstruck companies immediately (R. 166; BDSA Order M-1A). To this date,

[9] Section 101 of that Act, 50 U.S.C. App. § 2071, provides that:

"(a) The President is authorized (1) to require that performance under contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and, for the purpose of assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance, and (2) to allocate materials and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense.

"(b) The powers granted in this section shall not be used to control the general distribution of any material in the civilian market unless the President finds (1) that such material is a scarce and critical material essential to the national defense, and (2) that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship.

however, the BDSA has not "frozen" any type of steel, either in inventory or to be produced by nonstruck mills, by requiring that it be devoted exclusively to defense needs. In contrast, in the 1956 steel strike, the BDSA on July 20, 1956, on the twentieth day of the strike, issued an order prohibiting "shipments against unrated [nonessential] orders of all types of aircraft-quality steel, nickel-bearing steel plate over 72 inches wide, or nickel-bearing stainless steel plate over ½ inch thick." 21 Fed. Reg. 5484 (July 21, 1956). The failure of the Government to yet use its full power in the current situation is eloquent testimony of the lack of any genuine shortage of steel to meet defense needs.

7. The last finding of fact made by the District Court to show peril is the idling of men and facilities as a result of the strike (R. 247). As we have stated, detriment to economic well-being is irrelevant to health in the statutory sense. This aside, as the careful affidavit of Leon H. Keyserling shows, the level of economic activity in this country is higher now, despite the strike, than it was during the economic recession experienced in 1958, and the Administration did not regard the 1958 conditions as sufficient to call forth an affirmative program to restore maximum production, employment and purchasing power (R. 94-97). Furthermore, statements and statistics of the United States Department of Labor show that, while 1958 unemployment went as high as 5,437,000, current unemployment is slightly more than 3,000,000, and is not likely in the near future to reach the 1958 magnitude (R. 107-108). Indeed, the District Court found as a fact that even if the strike continued through December, strike-caused unemployment would increase by only 2¼ million (R. 246).

The state of the economy is not, therefore, subject to any vicissitudes caused by the steel strike which are different from the cyclical fluctuations that the economy continuously undergoes. Indeed, as the October report of

the Council of Economic Advisors, chaired by Dr. Raymond J. Saulnier, shows, the economy is booming, with gross national product, income, and employment substantially ahead of a year ago. Economic Indicators, October 1959, Council of Economic Advisors, Joint Economic Committee, 86th Cong., 1st Sess. Only the gloomiest prognosis, based on an assumption that the steel strike will never end, can even colorably suggest the view that the economy as a whole is any serious jeopardy.

The Government in its brief, not content with suggesting economic paralysis where none exists or impends, goes even further. It states that, although food, medical care, heat, and shelter are available, physical health is nevertheless impaired because widespread unemployment has deprived the public of the wherewithal to buy these goods and services (Govt. br. pp. 49-50). The Government paints with a far-fetched brush. There is nothing in the record to show that, now or in the future, there are any who are hungry, sick, cold, or homeless because of the steel strike—except, perhaps, the strikers. And the Union will take care of its own.

Finally, the Government reaches the heights of hyperbole in quotation from the "affidavit" of Dr. Saulnier to the effect that to continue the steel strike—or, more precisely, not to discontinue it for 80 days—will trammel the "confidence of friendly and uncommitted nations," weaken "deterrence of potential aggressors," and "invite military adventurers to set small wars in motion" (Govt. br. p. 49). The nation's spokesmen in foreign affairs are the President and the Secretary of State. The President expressed no such alarm in his statement explaining his reasons for invoking the statute (R. 10). The Secretary of State has made no affidavit at all. And we can hardly imagine less likely consequences from the steel strike. To suggest such fears is to reveal, we believe, the bankruptcy of the Government's attempt to show genuine peril to natural health or safety. None exists.

II. THE JUDGMENT BELOW MUST BE REVERSED EVEN IF IT IS CONCEDED THAT THE GOVERNMENT HAS MET THE BURDEN OF PROVING THAT THE JURISDICTIONAL PREREQUISITES OF SECTION 208 WERE SATISFIED.

We have shown above that the judgment here must be reversed because the Government failed to prove on final hearing, by a clear preponderance of the evidence, that the statutory prerequisites established by Section 208 for the kind of injunction issued here were met.

We will now show that, even if it be assumed that the Government technically satisfied the jurisdictional requirements of Section 208, the judgment below should be reversed for each of the following entirely separate and independent grounds: (a) the District Court completely failed to consider the equities before issuing its order and thus failed to perform an essential part of its function, (b) the Court of Appeals erred in sustaining the District Court's judgment in the face of the District Court's failure to exercise its discretion, and (c) the application of equitable discretion and a balancing of the equities in this case would have justified withholding of an injunction or, at most, an injunction limited to the tiny fraction of the several hundred struck plants which might be required to satisfy the isolated shortages of specialized steel products, if any, needed for national defense to avert imperiling the national safety.

A. *The District Court Has Discretion Under Section 208*

The union urged strongly upon the District Court, both orally (R. 131) and in its memorandum, that the court had discretionary powers and that it should exercise them in favor of refusing the injunction order requested by the Government. The Government, in its brief to the District Court, simply ignored the question and assumed that if

the statutory requirements were met an injunction against the strike should issue as a matter of course.* There was no further briefing in the Court of Appeals. In the oral argument there the union again urged that the District Court had discretion. Counsel for the Government first argued that an injunction against the strike was mandatory and, then under questioning by the Court, agreed that the Government's position might be said to be that the discretion which is ordinarily present "was squeezed out, so to speak." (Transcript of Argument, pp. 94-97.)

In its brief in opposition, the Government is not clear on this issue, although the petition for certiorari raised it explicitly. A fair reading of that brief, however, leads to the inference that the Government's present position is that the District Court lacks discretion and is required to issue an injunction when peril to the national health and safety are proved. Thus, the Government says that Congress has determined "that the national interest *requires* a temporary cessation of a concerted work stoppage where the conditions prescribed by the statute are found to exist." The Government adds "that in any case where the required emergency conditions are found to exist, the policy determination that an injunction would serve the national interest is to be found in the statute and *is not an issue for the court*," (Brief in Opposition, pp. 53-54, emphasis added).

We submit that the Government's apparent position as to the mandatory nature of the District Court's function on issuance of an injunction is plainly wrong. In our view, the statute must be read as vesting discretion in the District Court to determine whether to grant or deny an injunction, and also, if an injunction is to issue, whether it should embrace the entire strike and all of the strikers at the scores of companies involved in separate disputes

* Both the union's memorandum and the Government's brief are in the original record which has been forwarded to this Court by the Court of Appeals for the Third Circuit. They were, however, omitted from the printed record by stipulation of counsel.

with the union, or just that small percentage of the struck mills which alone create any peril to national safety.

Our views on this question are based, first, on the statutory language. Section 208 of the Act provides only that if the district court makes the enumerated findings as to the scope and effect of the strike, then "it shall have jurisdiction to enjoin any such strike or lockout, or the continuing thereof, and to make such other orders as may be appropriate." It does not say that the Court "shall" issue an injunction but only that it shall have "jurisdiction" to do so.

That the language was intended to be permissive and not mandatory is underlined by the contrast between the language of Section 208 and Section 210. Section 210 requires the Attorney General, after the last offer vote or a settlement of the dispute, to move to discharge the injunction, which motion, the statute says "*shall* then be granted and the injunction discharged." Congress thus demonstrated in the very title of the statute under consideration that it knew how to write language which differentiated between mandatory and discretionary action by the district court. It deliberately chose, in Section 208, only to grant "jurisdiction" to the district court and thereby to allow the court to exercise its jurisdiction in the discretionary manner in which courts of equity have traditionally exercised their jurisdiction.

To read the statute as mandating an injunction is to delete from the phrase "shall have jurisdiction to enjoin" the words "have jurisdiction to," with the result that the statute is truncated to a command that the District Court "shall . . . enjoin." Such a textual mutilation is at war with the principle of equitable discretion which is at the heart of the exercise of the Chancellor's functions.

"We are dealing here with the requirements of equity practice with a background of several hundred years of history. Only the other day we stated that 'An appeal

to the equity jurisdiction conferred on federal district courts is an appeal to the sound discretion which guides the determinations of courts of equity.' [Citation.] The historic injunctive process was designed to deter, not to punish. The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity had distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims. We do not believe that such a major departure from that long tradition as is here proposed should be lightly implied. . . . [I]f Congress desired to make such an abrupt departure from traditional equity practice as is suggested, it would have made its desire plain. Hence we resolve the ambiguities of §205(a) in favor of that interpretation which affords a full opportunity for equity courts to treat enforcement proceedings under this emergency legislation in accordance with their traditional practices, as conditioned by the necessities of the public interest which Congress has sought to protect." *Hecht Co.* v. *Bowles*, 321 U. S. 321, 329-330.

It was *Hecht Co.* v. *Bowles*, indeed, which the Government relied on in *United States* v. *United Steelworkers of America*, 202 F. 2d 132, certiorari before judgment denied, 344 U. S. 915, to justify the existence of discretion in a Section 208 proceeding. In its brief in the Court of Appeals for the Second Circuit in that case, the Government argued as follows (p. 21):

> "The power under the present Act to exercise discretion in granting or withholding an injunction means no more than that in each case the court must balance the equities. For example, it is conceivable that a case may occur which, although within the statute, involves relatively slight danger to the public safety and a pros-

pect of severe injury to the economic interest of the strikers. In such a case the court might refuse an injunction." [24]

[24] "Under ordinary principles, such a matter is largely within the discretion of the district court. . . ."

The Court of Appeals here concurred unanimously in that view, but the judges disagreed as to the consequences of their agreement. Judge Hastie, of course, based his dissent on the very ground that the trial court abused its discretion in issuing the injunction (R. 310-317(. The majority opinion, by Chief Judge Biggs, sustained the judgment below not on the theory that, upon the evidence, an injunction had to issue but, to the contrary, on the theory that the trial court "in the exercise of its sound legal discretion" could have decided either way and the way it did decide could not be said to be an "abuse" of that discretion. (R. 310)

We believe, in sum, that the judges in the court below, and the Government in the *Steelworkers* case in the Second Circuit, were correct, and that any contention that the issuance of an injunction under § 208 is mandatory is plainly erroneous.

B. *The District Court's Failure to Consider the Factors Bearing on the Exercise of Its Discretion Was Error.*

That the district court did not attempt to consider the factors bearing on the proper exercise of its discretion is clear from the record. The transcript of the proceedings before the district court on October 21 (R. 220-244) is devoid of the slightest suggestion that the court recognized that it had any discretion in the premises. In his brief oral statement (R. 239) the District Judge stated simply that he would sign findings of fact and conclusions of law meeting the statutory requirements and that he would therefore issue an injunction. The court overruled the proposed

conclusion of law submitted by the union that the court had discretion, as well as the union's proposed findings of fact which would have required the exercise of discretion (R. 214-215).

The findings and conclusions adopted by the court contained no reference to any equitable considerations other than the absence of an adequate remedy at law and simply concluded that the Government was entitled to the relief prayed for because of the findings as to safety and health.

Further, the injunction order itself is totally silent on the reasons for its issuance. Plainly, therefore, and in light of the requirement of Rule 65 (d) that the reasons for granting an injunction be set forth by the issuing court, it must be concluded that the district court simply assumed that the injunctive remedy was mandatory, and issued its injunction on that assumption.

If we are correct in our argument so far this, in itself, was error. There were presented to the the District Court several alternative courses of action. The union urged that no injunction was warranted because it would prevent a settlement which could be expeditiously achieved in the absence of an injunction. The union also urged denial of an injunction because alternative statutory remedies are available to cope with any possible defense needs. Finally, the union urged that if an injunction must issue, it should be limited to the handful of plants which might be needed to produce the specialty steels claimed to be required for the defense program.

The choice as to these alternatives was properly to be made by the District Court, not on the bare facts of the affidavits filed by the parties but after inquiry, examination and discussion with the parties and their counsel. The failure of the District Court even to inquire into these matters properly bearing on the exercise of its discretion is emphasized by the statement of counsel for the union to the court that it was the policy of the union to cooperate

with the Government in obtaining any steel necessary for national defense, and the proof on that issue submitted by the union. (R. 150-151)

C. *The Affirmance by the Court of Appeals Was Based on an Erroneous Premise.*

As we have stated the Court of Appeals here neither concluded that an injunction under Section 208 was mandatory nor that, on the record, the only discretion which the trial court could have exercised was in favor of an injunction. To the contrary, the court concluded only that no case had been made on appeal for concluding that the trial court's action exceeded the limits of its discretion.

It thus affirmed the judgment on a basis wholly without warrant on the record. It simply cannot be said, as Chief Judge Biggs did, that the court below might properly have decided either way "in the exercise of its sound legal discretion" (R. 310) and that, therefore, there was no reversible abuse of discretion. For the court below exercised no discretion. If the premise upon which the Court of Appeals decided the case was correct, therefore, its judgment should be reversed and the cause should be remanded to the District Court so that it can do what the Court of Appeals assumed it did: consider whether, as a matter of sound equitable discretion, an injunction of the kind requested by the Government should be issued.

D. *It Would Not Have Been an Abuse of Discretion for the Trial Court to Refuse to Issue the Injunction Requested by the Government*

There is one basis upon which the action of the trial court can be sustained here, even though that court failed to address itself to the relevant equitable considerations. That basis is a conclusion, on the bare face of the record here, that the only proper exercise of discretion in this

case would have been to issue an injunction in the form requested by the Government. We do not believe that any such contention can be successfully maintained. There are a number of factors which, had they been considered by the trial court, would clearly have justified an exercise of discretion in favor of either refusing any injunctive remedy or limiting the injunction to the imperative needs of the national safety.

1. The first consideration is the one set forth in the dissenting opinion of Judge Hastie below. In its brief the Government urges that Judge Hastie was in error. In doing so, however, it overlooks the major premise upon which he relied. That premise was that, on the record, it was the very anticipation of the injunction by the employers which prevented a settlement of the dispute. Judge Hastie did not argue, as the Government seems to say, that an injunction should not be issued because it would have the "incidental consequence of strengthening the bargaining position of one party." (Brief in Opposition, p. 54) To the contrary, his dissent was based upon the proposition that in order to meet the statutory objectives stated by the Government—"to safeguard the safety and health of the nation"—the injunction should not issue. If we accept the factual premise from which Judge Hastie argued, and on the record we submit that this premise cannot be controverted, the peril to the safety and health of the nation would be enlarged rather than diminished by the issuance of an injunction. The fact that an injunction would not "facilitate a settlement" is relevant not only to the statutory objectives of the Act of which Section 208 is a part—namely to achieve settlements of labor disputes through free collective bargaining—but also to the objectives of Section 208 itself. For if it is assumed that an injunction would inhibit a settlement, the peril to the national health or safety claimed to arise from the failure of a settlement would be eliminated if an injunction were

refused and, on the other hand, would merely be postponed if an injunction were granted.

We need not urge, be it noted, that the views expressed by Judge Hastie are the only views to which a district court examining the situation could come. We need only urge that this result is one which would be permissible if the district court had addressed itself to the question. And, in support of our contention we have not only the dissenting views of Judge Hastie but also the view of the majority below. For, as Chief Judge Biggs' opinion states:

> ". . . the court below in the exercise of its sound legal discretion might have found that the exercise of the provisions of Sections 178 and 179, 29 U. S. C. A., would be ineffectual, rather than efficient, to quell labor strife and obviate the menace to national health or safety . . .". (R. 310).

2. A second consideration which would justify the refusal to issue an injunction against the strike as a matter of discretion is the availability of other and less drastic remedies to relieve the situation. Surely, a court of equity could consider the failure of the Government to exercise fully its allocation powers under Section 101 of the Defense Production Act, 50 U. S. C. App. §2071, to meet any defense needs, (which we have set forth in Part I, *supra*) as a sufficient basis for refusing to issue an injunction against 500,000 strikers to achieve the same objective. There are, in addition, other available statutory remedies which the Government has failed to utilize. Section 708 of the Defense Production Act of 1950 (50 U. S. C. App. §2158) provides for reactivation of particular plants by consent between labor and management. This section is as follows:

> "The President is authorized to consult with representatives of industry, business, financing, agriculture, labor and other interests, with a view to en-

couraging the making by such persons with the approval by the President of voluntary agreements and programs to further the objectives of this Act."

Significantly, the Government has never asked the union or any steel company to reactivate any plants necessary for defense, and there is not the slightest reason to suppose that either would be deaf to such a request. In fact, the union has cooperated to remove steel from struck mills required for defense purposes (R. 107, 111-116). Since the "objectives of this act" are "to provide for the national defense and national security" (50 U. S. C. App. §2062), it is clearly within the contemplation of that section for the President to "encourage" management and labor to make some arrangements whereby production of essential defense materials would be continued despite the existence of a labor dispute.

Finally, Section 18 of the Selective Service Act of 1948 (50 U. S. C. App. §468) authorizes the Government to place orders for materials the procurement of which has been authorized by Congress for the exclusive use of the armed forces or the Atomic Energy Commission. Any person receiving such an order has a legal duty to fill it within the time period prescribed by the order or as soon thereafter as possible. If he fails to do so

> "the President is authorized to take immediate possession of any plant, mine or other facility of such person and to operate it, through any Government agency, for the production of such articles or materials as may be required by the Government."

This provision is available for use if the failure to fill an order arises as a result of a strike, as Justices Jackson and Clark noted in *Youngstown Co.* v. *Sawyer*, 343 U. S. 579, 639, 664-666.

3. The final consideration which would have justified the trial court in reaching a different result if it had exercised its discretion, is the fact that a much more limited

injunction than the one actually issued would clearly have served to meet any demonstrated peril to the national health or safety. We have argued, in part I-B, above that Section 208 does not authorize an injunction against a strike in an entire industry because the disputes between the union and a very small number of employers in the industry creates a peril to the national health or safety. Even if we are wrong in that contention as a matter of power in the district court, certainly we are correct that it would not have been an abuse of discretion for the trial court to have limited its injunction to the selective reopening of the few plants which would indisputably meet any conceivable defense needs for steel.

The court of appeals appears to have rejected this consideration solely on the ground that such selective reopening would be impractical. The district court of course, did not even inquire into the subject. If it had, it would have found, as we have demonstrated in Part I-B above, that the opening of the few plants which at most are necessary to meet the defense needs for steel would be entirely practical.

On the record here it is impossible to say which plants or which companies should have been required to resume production. The reason, of course, is that the Government never specified in the district court, or anywhere else, precisely which kinds of specialty steel products were in short supply and essential to the national defense. But its case with respect to the national safety rested, not on the loss of steel tonnage—for more than 15 percent of steel capacity is still operating to meet the 1 percent of normal production used for defense purposes—but on the claim that there were special steels which the operating companies could not make. We have disputed that claim. But even if we concede that it was proved, surely it cannot sensibly be argued that the trial court, in the exercise of its sound legal discretion, could not have limited its in-

junction to the producers of these specialty steels. Indeed, although it is unnecessary that we do so, we go further. We think that it would have been an abuse of discretion for the trial court to have refused so to exercise its discretion.

The majority below seemed to have been influenced to their conclusion that the sweeping injunction issued by the trial court was not an abuse of discretion by the view that only if an injunction were issued could the administrative machinery provided in Section 209 be employed. But, as Judge Hastie pointed out, an injunction against the strike as such is not necessary to activate these procedures (R. 316-317). An injunction in the terms of paragraph 5 of the order entered by the District Court (R. 250) would suffice. Even if an injunction against a strike should be regarded as necessary, one requiring selective reopening of the plants would clearly constitute an adequate statutory trigger. There was, therefore, even on the reasoning of the majority of the court below, no equitable basis for issuing an injunction against 500,000 strikers. A discriminating exercise of judicial power here would have met any conceivable peril to the national defense, and, at the same time, would have preserved the values which Congress plainly wanted to preserve by limiting its interference with free collective bargaining to the minimum extent made necessary by the overriding requirements of national safety or health.

III. THE 80-DAY INJUNCTION PROVISIONS OF THE STATUTE ARE UNCONSTITUTIONAL, AS THEY CONFER ON THE COURTS DUTIES WHICH ARE NOT JUDICIAL AND ARE NOT CONNECTED WITH ANY CASE OR CONTROVERSY.

It is our contention that Section 208 of the Taft-Hartley Act attempts to vest in the federal courts powers which are outside the limitations of Article III, Section 2, of the Con-

stitution. The contention is, simply, that under the Taft-Hartley Act, the federal courts are asked to issue an injunction which is no part of "the judicial function of adjudicating justiciable controversies." *National Mutual Insurance Co.* v. *Tidewater Transfer Co.*, 337 U. S. 582, 600.

A—*The Nature of the Statutory Scheme*

In order to put our argument in this regard into its proper setting, it is necessary to recapitulate the statutory procedure established under the national emergency provisions of the Taft-Hartley Act. The critical sections are Sections 208-210. Section 208 provides that, after receiving the report of a Board of Inquiry, the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin a strike. If the court finds that the strike meets the statutory requirements it is then given jurisdiction to enjoin the strike or its continuation and to make such other orders as may be appropriate. The next step is contained in Section 209(a). This provides that whenever a district court has issued an order under Section 208 it shall be the duty of the parties to make every effort to adjust and settle their differences with the assistance of the Federal Mediation and Conciliation Service. The Board of Inquiry is reconvened, and if the strike is not settled at the end of 60 days, the Board is required to "report to the President the current position of the parties and the efforts which have been made for settlement and shall include a statement of the employer's last offer of settlement." Within the next 15 days the NLRB conducts a ballot among the employees to ascertain whether they wish to accept the last offer. The results must be certified to the Attorney General within the next 5 days. He is then required to move the court to discharge the injunction, "which motion shall then be granted. . . ." The final step is the President's report to Congress with his recom-

mendation for its "consideration and appropriate action." [10]

This is truly a remarkable procedure, unparalleled by any which we have been able to discover. The only function conferred upon a district court by these sections is to issue an injunction which it must automatically dissolve after 80 days. That injunction serves not only as a method of terminating the strike but also as the trigger for an administrative machinery looking toward the settlement of the dispute. It is sometimes said that the injunction issued under these provisions is an 80-day injunction. This is not quite correct. The injunction is, indeed, the starting point for administrative procedures which are given a maximum period of 80 days, but the injunction can, and indeed must, be discharged if these administrative procedures are concluded in a shorter period.

The critical feature of this statutory scheme, in our view, is that Congress intended to use the judicial power, not to adjudicate rights or to compel the performance of duties, but as the necessary and prescribed premise for an administrative procedure designed to settle a labor dispute. The intention of Congress is, we think, plain. Congress did not, as the Government's brief in opposition asserts,[11] create a substantive "right of the United States and the public to be free from a work stoppage threatening the national health and safety," and provide a judicial remedy if a union refused

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[10] The House Minority Report declared of an earlier version of these provisions:

> "Under sections 203 and 204 the President, the Attorney General, the district courts, the Secretary of Labor, the Office of Conciliation, the Administrator of the National Labor Relations Act, the circuit court of appeals, and special boards would all be concerned with the handling of the most vital disputes in the country affecting the national health and safety. Everybody seems to be 'in the act' except Jimmy Durante." House Minority Report No. 245, 80th Cong., 1st Sess., p. 103.

[11] Brief in Opposition, p. 38.

to comply with its duty to end such a stoppage. Nor did it, as that brief elsewhere asserts,[12] grant an 80-day right of this character. It no doubt intended that there should be, in appropriate circumstances, an 80-day suspension, or delay, in a strike, but it specifically intended that this should be accomplished only by an injunction. The injunction was prescribed by Congress, not the suspension.

That this was the intention of Congress is clear from the words of the statute, from its legislative history, and from the method in which it has been applied in the past and, indeed, in this case. The words of the statute make it clear, we believe, that the administrative procedures prescribed in it cannot be invoked unless some sort of injunctive order issues. The statute simply cannot be read as imposing a duty to suspend a strike for 80 days in order that those procedures be invoked. There are other provisions in which Congress did intend a delay in the strike so that administrative machinery could be invoked. In Section 8(d) of the Act, 29 U.S.C., § 158(d), Congress provided that it should be an unfair labor practice to strike within a thirty-day period after the Mediation and Conciliation Service had been given notice of the unresolved dispute. It thus established a duty to postpone a strike for 30 days in order to give the Service an opportunity to settle the dispute. A union can comply with a duty thus established. In the provisions here under consideration, however, there is no way in which a union can do so.

The plain fact is that Congress did not simply want a strike which would imperil the national health or safety to be postponed for 80 days or to be interrupted for 80 days. It wanted such a strike to be *enjoined* for 80 days. And it made its intention perfectly clear by setting up an administrative clock which starts running only when an injunctive order is issued.

That it was the injunction, not the delay or interruption of

[12] Id. at 39.

the strike, which Congress wanted to provide is shown most clearly by asking whether there is any way in which a union can avoid an injunction by meeting an obligation implied from the statute. The answer clearly is no. In the American Locomotive case (*United States* v. *United Steelworkers of America*, 202 F. 2d 132) the union voluntarily delayed its strike for 261 days.[13] When it finally did strike, the Taft-Hartley procedures were nevertheless applied. In at least three other injunction proceedings brought under Section 208 there had been delays in the strike which went for nought when Sections 206-210 were invoked: the 1948 and 1949-1950 coal disputes [14] and the 1956 longeshore dispute.[15] And, of course, in this very case the union postponed its strike for 14 days—from July 1 to July 15—at the request of the President. (R. 40) Yet, in this case, the Government is asking for an additional 80 days.

The fact that there is no way in which a union can comply with the requirement for an 80-day "cooling off" period is, of course, just another way of saying that the statute sets up no standard of conduct and no definition of rights and wrongs. It is the injunction itself which measures the delay in the strike which is required by the statute and which creates and measues the duty not to strike.

The contention we make here is simply that, in so providing, Congress has put the federal district courts in a business for which they are not suited and which the Constitution has forbidden to them. We now turn to these constitutional limitations.

B—*The Constitutional Limitation*

The federal courts, under the Constitution, are limited to

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[13] Dept. of Labor, Bureau of Labor Statistics, *Work Stoppages—National Emergency Dispute under the Labor Management Relations (Taft-Hartley) Act* (Supp. 1, 1954), pp. 1-2.

[14] *Ibid.* (1952), pp. 3-4, 7-8.

[15] *Ibid.* (Supp. 3, 1956), p. 1.

"the judicial function of adjudicating justiciable controversies" (*National Mutual Insurance Co.* v. *Tidewater Transfer Co.*, 337 U. S. 582, 600, Opinion of Jackson, J.). Whether the source of this limitation rests solely on Article III or also, or perhaps alternatively, on the doctrine of separation of powers is not entirely clear. In the *Tidewater* case, three of the opinions, joined in by six justices, derived the limitation solely from Article III. (Concurring opinion of Mr. Justice Rutledge and dissenting opinions of Mr. Justice Frankfurter and the Chief Justice.) One opinion, that of Mr. Justice Jackson, joined by Justices Black and Burton, declared that the limitation stemmed from the doctrine of separation of powers which permeates the Constitution, 337 U. S. 582 at 590-591. This difference of opinion as to the source of the constitutional limitation is not relevant here, however, since all of the justices agreed that the courts created under Article III cannot be given functions not connected with the adjudication of cases or controversies.

There is no constitutional restriction which the Supreme Court has been more zealous to enforce. In other fields the Court has repeatedly proclaimed its reluctance to hold invalid acts of Congress, but it has shown no such reticence where Article III of the Constitution is involved. In his dissenting opinion in the *Tidewater* case, Mr. Justice Frankfurter declared:

> ". . . If there is one subject as to which this Court ought not to feel inhibited in passing on the validity of legislation by doubts of its own competence to judge what Congress has done, it is legislation affecting the jurisdiction of the federal courts. When Congress on a rare occasion through inadvertence or generosity exceeds those limitations, this Court should not good-naturedly ignore such a transgression of congressional powers." 337 U. S. 582 at 655.

We think that the judicial function does not include the function which Congress has sought to thrust upon the dis-

trict courts by this statute. The judicial process is a process of judging. This implies that there are parties in the case before it who have, or who may have, opposing contentions as to what their respective rights and duties under the law are. A court, when it performs the judicial function, judges these contentions and determines what the respective rights and duties of the parties are. Having made this judgment, it has certain powers to carry out that judgment. In a suit in equity, the court can enjoin the defendant to comply with his obligations under the law, or to take appropriate affirmative steps to correct a past failure to comply with his legal obligations. But in no case, we believe, can an Article III court be made the vehicle for issuing an order to a defendant to refrain from conduct not claimed to be unlawful either in the present or in the future. For when a court does so it is not judging the rights and duties of the parties—i.e., it is not adjudicating—it is itself creating rights and duties.[16]

This point was made most clearly by Mr. Justice Holmes

[16] The distinction we make here between a duty under the law and a duty created and existing only by virtue of an injunctive order is not in any way related to the argument as to whether judges make the law or merely find it. Certainly in many, if not most, cases or controversies the existence of the legal duty is unclear, else there would be no lawsuit. Whether the judge who decides what the legal duty is merely finds the law or makes it is immaterial to our argument here. Under either theory, the judge determines that there was a legal duty which should have been performed, or which should be performed in the future. Presumably any defendant with sufficient prescience as to the court's ultimate determination of the law could have complied with it without being ordered to do so. Or to put the matter another way, even if the law be described simply as an estimate of probable judicial action, persons subject to the law can make a guess as to their duties under it and perform those duties. Here, of course, that is impossible. The court neither finds nor creates law. It simply enjoins a strike which may be entirely lawful apart from the injunctive order itself. Nor can a union avoid such an injunction by correctly anticipating the court's determination of the statute's applicability and performing the duty prescribed by the statute—because the statute prescribes no duty.

in *Prentis* v. *Atlantic Coast Line Co.*, 211 U. S. 210, 227, in comparing a judicial inquiry with legislation:

> A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule, to be applied thereafter to all or some part of those subject to its power.

It does not matter that the proceeding is judicial in form or that questions are decided which might also be decided in a case. ". . . The effect of the inquiry, and of the decision upon it, is determined by the nature of the act to which the inquiry and decision lead up. . . . So, when the final act is legislative, the decision which induces it cannot be judicial in the practical sense, *although the questions considered might be the same that would arise in the trial of a case.*" 211 U. S. at 227. (Emphasis added) The action of a court may not be judicial "although the questions debated by it might have been the same that come before it as a court, and would have been discussed and passed upon by it in the same way that it would deal with them if they arose afterward in a case properly so called." 211 U. S. at 227.

The words of Mr. Justice Field, quoted with approval by the Supreme Court in *Muskrat* v. *United States*, 219 U. S. 346, 357 are apt:

> "By cases and controversies are intended the claims of litigants brought before the courts . . . for the protection or enforcement of rights, or the prevention, redress or punishment of wrongs."

Most illustrative of this principle is *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447. The case involved Section 12 of the Interstate Commerce Act, which authorized the Interstate Commerce Commission "to require, by

subpoena, the attendance and testimony of witnesses" and the production of books, papers, etc., and further provided that in case of disobedience to a subpoena the Commission "may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers," etc. The validity of the Act was sustained by a vote of 5-3. The majority opinion posed the issue as follows (154 U. S. at 475-476):

> ". . . So, in *Smith* v. *Adams,* 130 U. S. 173, 9 Sup. Ct. 566, Mr. Justice Field, speaking for the court, said that the terms 'cases' and 'controversies,' in the constitution, embraced 'the claims or contentions of litigants brought before the courts for adjudication by regular proceedings established for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs.'
>
> "'Testing the present proceeding by these principles, we are of opinion that it is one that can properly be brought under judicial cognizance."

The court pointed out that the Interstate Commerce Act authorized the Commission to summon witnesses and to require the production of books, papers, etc., and that the constitutionality of this provision was conceded. Therefore, the court declared, there was a legal duty for one so summoned to appear and testify, and the adjudication as to whether this duty had been complied with constituted the controversy before the court. 154 U. S. at 476. The dissenting justices, on the contrary rested their position primarily upon the proposition that the Act did not create any legal duty to respond to a Commission subpoena, so that there was no pre-existing duty for the courts to enforce. 155 U. S. 3, 7.

Thus in the view of both the majority and the dissenting justices in the *Brimson* case, the question whether the courts could constitutionally act depended on whether Congress

had established any rule of law they could enforce, or stated another way, on whether the defendants were under any pre-existing legal duty to act, which, if not performed voluntarily, could then be compelled by the Court.

Similarly, *Douds* v. *Retail Store Union*, 170 F. 2d 695, in which the court sustained the constitutionality of the injunctive procedures of Section 10(1) of this very Act, underlines the nature of the constitutional principle.

Under Section 10(1) the National Labor Relations Board is required to petition in a Federal District Court for injunctive relief in cases in which it "has reasonable cause to believe" that a certain type of unfair labor practice has occurred. Whether or not an injunction is issued by a district court, an unfair labor practice case under 8(b)(4) is thereafter processed just as is any other unfair labor practice case. The case will not come before the district court for further consideration, but will go to the Board, a Court of Appeals, and, perhaps, the Supreme Court.

The Court disposed of the constitutional argument in the *Douds* case quite briefly. It said: "Here was a dispute to be resolved under the direct provisions of the statute. It did not cease to be a dispute because the ultimate decision on the merits would not rest with the [District] court."

It simply is not true, as the Government says at p. 37 of its brief, that the union in that case had no "duty" to cease conduct prior to the injunction. The injunction was simply a preliminary injunction against conduct claimed to violate the National Labor Relations Act. It differed from the normal preliminary injunction only in that the ultimate disposition of the claim of illegality would be resolved by a different body than the one which issued the first order. But clearly that order issued only on a claim that the union's conduct was unlawful.

Sometimes, it is true, Congress does not spell out in words the nature of the rights and duties to be adjudicated. In a criminal statute, it sometimes does not say that an act is un-

lawful but simply that it shall be punished. The prohibition, however, is plainly implied from the punishment. *Ex Parte Siebold*, 100 U. S. 371, 388. And sometimes, it is true, it creates civil obligations in the form of a jurisdictional grant. *Pope* v. *United States*, 323 U. S. 1. But in each such case Congress has, however inartistically, imposed an obligation or created a duty and given a court power to adjudicate the question of whether the defendant has satisfied the obligation or duty. The constitutionality of the special jurisdictional act in the *Pope* case was upheld by this Court expressly on the theory that Congress, in a special jurisdictional act had "inartistically" created "a new obligation of the Government to pay petitioner's claims," 323 U. S. at 329, as well as provided a forum for the adjudication of the extent of that obligation.

The rule which all these cases establish is simply this: the judicial function is the function of settling a dispute, or a potential dispute, as to what the rights and duties of the parties are under the law, or of providing remedies where a violation of some duty has been alleged or found. The *Brimson* case establishes that the duty alleged to be owed by the defendants may be to an administrative body; the *Retail Store Union* case establishes that the ultimate disposition of the dispute need not rest with the court asked to resolve it preliminarily, the *Pope* case establishes that a statute which is jurisdictional in form may also establish the obligations to be enforced. But no case, we believe, brings within the judicial function the function of ordering a strike—or anything else—to be terminated in the absence of adjudication that the defendant has failed to do what the court finds he should have done, or has otherwise failed to meet some substantive standards.

The Government disputes these propositions by setting forth what it regards as analagous situations. An analysis of the cases actually cited, however, illustrates rather than defeats our argument.

The case cited first (p. 28) and last (p. 37) is *In re Debs*, 158 U. S. 564. We think that *Debs* is discredited. But whether that be so or not, it is clear that this Court in *Debs* sought to justify the injunction issued by the Circuit Court on the basis of the principles we have urged rather than to deny them.

In *Debs*, it was alleged that the defendants created a boycott against the cars of the Pullman Company; that by force and violence they prevented the movement of any Pullman cars and of the trains of the companies that hauled Pullman cars; that they forcibly obstructed, derailed and wrecked engines and trains of the railroad companies; and that "by these and other unlawful means" attempted to obtain control of the entire operations of the companies. 158 U. S. at 568-569. An injunction was issued and violated, and Debs and others were punished for contempt. The case came to the Supreme Court on applications for habeas corpus.

Two questions were thus presented, the Court said (158 U. S. at 577):

> "First. Are the relations of the general government to interstate commerce and the transportation of the mails such as authorize a direct interference to prevent a forcible obstruction thereof? Second. If authority exists, as authority in governmental affairs implies both power and duty, has a court of equity jurisdiction to issue an injunction in aid of the performance of such duty?"

The Court answered both questions in the affirmative. It held, first, that since "Congress . . . has assumed actual control" over interstate commerce and the transportation of the mails, "it follows that the national government may prevent any unlawful and forcible interference therewith." 158 U. S. at 581. Passing to the second question, 158 U. S. at 582, it held that, just as the government had the power

to forcibly abate a nuisance or prevent unlawful conduct, there was also the "right of appeal, in an orderly way, to the courts for a judicial determination." Indeed, said the Court, "it is more to the praise than to the blame of the Government that, instead of determining for itself questions of right and wrong on the part of these petitioners . . . it submitted all those questions to . . . judicial tribunals. . . ." 158 U. S. at 583.

Equally unhelpful to the Government's position, and indeed even acknowledged to be so, are *Sanitary District of Chicago* v. *United States*, 266 U. S. 405, *Pennsylvania* v. *Wheeling, etc., Bridge Co.*, 13 How. 518 and *Georgetown* v. *Alexandria Bridge Co.*, 12 Pet. 91. The *Sanitary District* case involved a diversion of Lake Michigan waters by the City of Chicago alleged to be in violation of an act of Congress. The issue litigated was whether the diversion was lawful. The *Wheeling Bridge* case involved an injunction against the building of a bridge which was claimed to unlawfully obstruct navigation on the Ohio River. The issue in the *Alexandria Bridge* case was whether an injunction would lie against a nuisance in the light of the fact that such a nuisance was also subject to criminal prosecution.

Nor is the acknowledged power of the federal courts to entertain condemnation proceedings destructive of our argument. This Court, in *Kohl* v. *United States*, 91 U. S. 367, sustained the right of the United States to institute condemnation proceedings, without express statutory provision for a judicial proceeding therefor, on precisely the theory that "the right of eminent domain was always a right at common law. It was not a right in equity, nor was it even the creature of a statute, . . . the suit is an attempt to enforce a legal right." 91 U. S. at 376.

Ullman v. *United States*, 350 U. S. 422, does not advance the argument. The order to testify there was in aid of a judicial proceeding already in progress, and the Court specifically limited its ruling to the provision of the statute ap-

plicable in such cases. 350 U. S. at 431. In any case it may be questioned whether the court, under any provisions of the statute, is creating the duty to testify or merely eliminating an obstruction, the claim of Fifth Amendment privilege, to the general duty to do so.

Equally irrelevant are *Virginian Ry.* v. *System Federation,* 300 U. S. 515, *Marine Transit* v. *Dreyfus,* 284 U. S. 263, or the other similar cases cited by the Government. In all of those cases the law provided a duty and the powers of the judiciary were invoked only to resolve a dispute as to the duty, to enforce it, or to remedy the effects of a prior failure by the defendant to meet the substantive standards established by law. In no case was an injunctive remedy prescribed by Congress for the sake of having an injunction, rather than for the purpose of enforcing an obligation which the defendant could meet without requiring judicial process.

The only case which poses any serious theoretical problem is *Tutun* v. *United States,* 270 U. S. 568. It is possible to construct an argument which reconciles that case with the theory we have urged. In all candor, however, we think that the doctrine of *Tutun* simply should be treated like the charter cases "as exceptional, although within their special field there was no thought to disturb them." *Gully* v. *First National Bank,* 299 U. S. 109, 113-114. As the Court noted in *Tutun,* the federal courts had been engaged in the function of admitting to citizenship since 1795 without question of constitutionality. Words used by Mr. Justice Brandeis in that case should not, we believe, be used by way of analogy to sweep within the ambit of the federal judicial power a tremendous variety of "status" proceedings inconsistent with the views consistently expressed by this Court both before and after *Tutun.* Cf. *Textile Workers* v. *Lincoln Mills,* 353 U. S. 448, 481-483 (dissenting opinion by Mr. Justice Frankfurter). Particularly is this true, we believe, in the light of the absence of any precedent, old or new, for the kind of proceeding which Congress has created

under Section 208. If, to accommodat that proceeding, this Court should hold, as the Government urges at p. 31-32, that so long as the form is judicial, the existence of what this Court has heretofore defined to be a case or controversy is immaterial, there would seem to be no limitation upon the kinds of proceedings arising under federal law, or involving diversity of citizenship, which can be vested in the federal courts.

C—*The Functions Vested in the District Court by Section 208 Do Not Meet the Constitutional Requirements.*

If the principles we have set forth above correctly express the limitation which the Constitution places on the functions which Congress can impose on the Federal judiciary, it plainly follows that Sections 206-210 are unconstitutional. The principles we have urged are not "a mere form of words," as the Government would have it. They are fundamental to our system of government. That this is so is shown by the illustration given by the Government to reinforce its argument. It is our contention, the Governments says, that:

> "§ 208 would have been valid if it provided that the President should first 'order' the strikers back to work and then seek judicial enforcement of the order, but is invalid because a judicial order is sought in the first instance." (Brief in Opposition, p. 36.)

The Government urges, in other words, that we are in error because we have asserted that the federal courts cannot be given the power which the President would have if Section 208 had been written in the manner which the Government suggests. We do make that assertion. But the Government's answer to it shows, we submit, that the statute is unconstitutional rather than the contrary.

Plainly, if Congress had given the President the authority to order strikers back to work, he would have been exercising an executive rather than a judicial function in doing so.

Assuming that the power were validly granted to him the union would be under an obligation to terminate its strike upon the President's order. Its failure to do so could be rectified in the courts but it would be the President, not the courts, which initiated the obligation. It is precisely because Congress sought to vest in the courts a function which properly belongs in either the legislative or the executive branch of the government that we urged that Section 208 is unconstitutional. It is hardly an answer to that argument to assert that if the function given to the judiciary by that section had been given to the executive branch there would be no violation of the Constitution.

This is not a "mere form of words," as the Government says. Quite the contrary. There is a vast difference between a scheme in which the executive merely states an opinion, but the courts actually break a strike, and a scheme in which the President, not the courts, must bear responsibility for making the decision. The vice of this statute is precisely that it vests in the courts, and makes the courts responsible for, decisions which under our system of government should be made by the executive or legislative branches.

There is an equally vast difference between a statute which provides a duty which a union can voluntarily meet and one which requires that a union be haled into court as a defendant, whether or not it has complied with obligations imposed by Congress or the President. This is shown graphically by examining the amendments proposed to the Act in 1949. The Thomas-Lesinski bill (S. 249, 81st Cong., 1st Sess.) expressly provided for a cooling-off period in national emergency situations. It provided, in Sec. 301 for a Presidential proclamation calling upon the parties to refrain from a stoppage, or if one had begun, to resume work and operations. The President was then to appoint a board to investigate into the dispute, and it was provided, in Section 302 (3) that

the parties should continue or resume work until 5 days after that board had reported to the President. It thus defined the duties of the parties, as the present statute does not, and placed the executive duties with the executive.

What was the purpose of those provisions, and the objection to the Taft-Hartley provisions? It was stated succinctly in the Committee report:

> "Impartial authorities in the field of labor relations agreed in their testimony before the committee that an injunction is neither a necessary or desirable method of getting a cooling-off period and that in most cases it merely serves to aggravate the dispute and to delay rather than facilitate a settlement. (See testimony of William H. Davis, February 7, 1949; of William M. Leiserson, February 23, 1949; and of Nathan P. Feinsinger, February 19, 1949.) These authorities unanimously agreed that the Taft-Hartley Act emergency procedures were bad." (Senate Report No. 47, 81st Cong., 1st Sess., p. 36, emphasis added.)

The Thomas-Lesinski bill failed. Congress decided that it wanted an injunction *qua* injunction, rather than a cooling-off period obtained by voluntary acquiescence in a duty defined by the President or by statute. We do not ask this court to reverse that judgment. We do say that it makes clear the Congressional purpose to use the federal courts, not to achieve compliance with a defined standard of conduct, but to throw the force of the community and the judiciary against a lawful strike.

The Government argues, finally, that even if it concedes that we are correct as to the nature of the judicial function, the constitutional standard is met because the strike to be enjoined under Section 208 is "wrongful" because it impinges on the public welfare. (Brief in Opposition, p. 38.) It thus echoes the view of the court below (R. 292-294).

This argument simply will not hold water, whether the "wrongful" nature of the strike is claimed to be forever as

the Government implies, or for 80 days as the court below and the Second Circuit have said.

The Government's theory is the least defensible. It is inconceivable that Congress intended to make strikes affecting the national health or safety unlawful and to reinstate and expand to such an astonishing degree the theory of *In re Debs* 158, U. S. 564. If it had, it surely would not have provided that the injunctive remedy should terminate in 80 days. Equally clearly, it would have provided some alternative method of resolving the underlying economic dispute. A contrary contention, we believe, cannot be drawn from generalized statements of Congressional intention, particularly when they are belied by the specific provisions, not only of Sections 206-210, but also of Section 13 of the Act, 29 U.S.C. Sec. 163, which specifically provides:

> "Sec. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."

As to the theory that Congress created an implied obligation to terminate or delay a strike for 80 days, we think it is plain from the statute, and we have demonstrated above, that Congress did not so intend and did not in fact so provide. It provided for an 80-day injunction, not an obligation not to strike for 80 days. Termination or delay in a strike, without an injunction, would not satisfy the statutory language or the Congressional intention.

The statute simply cannot be read, as it was by the Court of Appeals for the Second Circuit and the court below as prohibiting strikes of the kind described in § 208 for a period of time. Nor, surely, can it be read as implying a duty not to strike for such a period. In *Pope v. United States*, 323 U. S. 1, the Government could, by paying Pope, satisfy the obligation implied by the Court from the jurisdictional stat-

ute. In *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447, the subpoenaed witness could satisfy his obligation by appearing and testifying. In *Ex Parte Siebold*, 100 U. S. 371, the Judges of Election could satisfy their "duty to the National Government" (100 U. S. at 388) by not stuffing ballot boxes. But, under this statute, the required 80-day period of freedom from the effects of a strike can be satisfied only if an injunction is issued.

The alternative theory of the court below (R. 294-296) was that Congress, in effect, reinstated, to a limited degree, the labor injunction as it existed before the Norris-La-Guardia Act, and the labor injunction was historically a "status" judgment. This too is wrong. However egregious the labor injunction has been, it always purported to rectify wrongs and violations of pre-existing rights. It enjoined violence, breach of contract, or tortious interference with advantageous relationships. It rested on rights conferred by statute or common law. It did not declare status not existing before the declaration was made.[17]

Proceeding on this premise, however, the court below then concluded that the judgment required to be exercised by a district court under Section 208 must be regarded as judicial rather than legislative because "if this were not so a substantial portion of the jurisdiction granted to the courts of the United States by Congress would fall within the interdiction of Article III, Section 2 of the Constitution." (R. 293) The Court cited as examples of the kind of judicial actions which would thus be interdicted, orders of the National Labor Relations Board, of the Securities and Exchange Commission and of the Interstate Commerce Commission, among others. The Court of Appeals thus underlined with great precision, the exact nature of the difficulty here. For none of these bodies is a court in the Article III sense. To some extent they do act judiciously in adjudicating exist-

[17] See Frankfurter and Greene, *The Labor Injunction* (1930) 89-90.

ing rights and duties, but to a large extent they do create status and prescribe future conduct on standards such as "public interest, convenience and necessity."

Such functions cannot constitutionally be vested in the Article III courts. *Federal Radio Commission* v. *General Electric Co.*, 281 U. S. 464 and cases therein cited. See also *Prentis* v. *Atlantic Coast Line*, 211 U. S. 210. When federal courts are called upon to review such agencies, they are not asked to act as administrative bodies. They are asked only to determine whether the administrative agency complied with its duty under the law and the standards which Congress prescribed. This is the critical distinction pointed out by this Court in *Federal Radio Commission* v. *Nelson Brothers Co.*, 289 U. S. 266, 275-277. This is also the distinction between review of the action of the Commissioner of Patents, *Morgan* v. *Daniels*, 153 U. S. 120, and the participation by the courts in the statutory proceedings under the patent laws, as in *Butterworth* v. *U. S.*, 112 U. S. 50.

The court below was, indeed, correct in its assumption that the function of the injunction under Section 208 is not to adjudicate existing rights or duties but to create rights or status. It erred when it held that the function of creating a status, of creating rights and duties, can properly be vested in Article III courts under the Constitution.

IV. THE PROCEEDINGS REQUIRED BY SECTION 208 REFLECT THE UNCONSTITUTIONAL NATURE OF THE FUNCTION VESTED IN THE DISTRICT COURTS.

Our argument above was conceptual in nature. We did not attempt to examine the character of the district court proceedings to show how they reflected the non-judicial nature of the function vested in the courts by Section 208. If we look at the question from that angle, however, the essentially non-judicial nature of a Section 208 proceeding quickly becomes apparent. The findings which a district

court is required to make, the matters he must consider in entering his order, and the proceedings he must conduct, are clearly more akin to those normally found in administrative or executive procedures than to the tradition of the judiciary.

A. *The "Findings"*

Under § 208 the district court is required to decide whether the occurrence or continuance of a shutdown "will imperil the national health and safety." He is not to review the findings of the Board of Inquiry or of the President — for they are required to make none — but to make his own.

This finding, while a finding of fact in form, is in actuality a determination beyond judicial competence. In the present case the question of safety turns upon a claimed peril to defense needs. How is a judge, within the confines of an adversary proceeding, to make a genuine judgment of defense requirements and the extent to which they are jeopardized? The information necessary to the judgment cannot be reduced to a record; the understanding necessary to evaluate the information is altogether foreign to the professional capacity of the judge. The judge is in truth required either to echo uncritically the opinion of the executive officers whose affidavits are produced by the government, or, if he would reject their opinion, to be just as uncritical; the judicial tools at his command are not equal to establishing a solid basis for either judicial acceptance or rejection of the executive opinion. To rubberstamp another's opinion, or to reject it without actual capacity for evaluating it, is not to exercise a judicial function.

Defense needs call in the highest degree for judgment in the political realm. To cite but a single instance, peril to national safety cannot be ascertained without also having an informed opinion of the prospect of foreign aggression, its scope, imminence, and effectiveness. These are political questions and their decision is therefore outside the judicial

function. "Such decisions are wholly confided by our Constitution to the political departments of the government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the judiciary has neither aptitude, facilities nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry." *Chicago & S. Air Lines* v. *Waterman SS Corp.*, 333 U.S. 103, 111.

This case was tried on affidavits. One has but to imagine the nature of the proceedings which would have taken place if the affiants had been placed on the witness stand, subject to cross-examination, to recognize the essentially unjudicial nature of the proceedings. A Congressional committee would, no doubt, find examination of the Secretary of Defense and the Administrator of the National Aeronautics and Space Administration as to the reasons for the delays in the missile and space programs very enlightening. The posture of our defenses and the question of whether the impact upon them of the steel strike is significant compared to the effect of budgetary and other considerations is a proper subject for hearing before the Armed Forces Committee of the Senate. Whether, as Dr. Saulnier has deposed, "small wars" may be invited because a steel strike is not enjoined (R. 195, quoted in the Brief in Opposition, p. 49) is an interesting question but hardly one on which it can be expected that a district judge is competent to rule. To expect a district court to make "findings" on such issues, and to examine those "findings" once made, on the basis of ordinary rules as to evidentiary support, is to apply rules and procedures simply not fitted for the task.

The vice is compounded if, as the Government claims, "national health" embraces economic well-being. How is a judge to know whether the economy can stand 3,000,000

unemployed but that 5,000,000 is intolerable? How is a judge to know whether dislocation of industry dependent on steel has reached a perilous stage? One has but to read the affidavits of economists Saulnier, Keyserling, and Nathan to realize that the courtroom is the least suited forum for resolving the clash of economic opinion and prognosis. To act as if that clash can be reduced to findings of fact and conclusions of law is to mock the judicial function.

Finally, even if all the other factors required to be taken into account could be reduced to justiciable form, there remains the question of prophecy inherent in the findings. The district court must find that the strike, if permitted to continue, will imperil the national health or safety. This statutory standard speaks, necessarily, in terms of the future. Attention must be directed, as the court below said, on "tomorrow's approaching storm." (R. 300). But how many tomorrows? Is it proper to consider the effects on the atomic weapons program relied on by the Government (Brief, p. 13) which will occur only if the strike continues until early 1960, or the predicted "ultimate" effect on unemployment recited by the District Court in its findings (R. 247) which is based on the premise that the strike will go on till the end of December?

Obviously a court, in order to make the requisite finding must predict what will happen if no injunction issues. Surely if the judge were persuaded by the evidence that if the strike were not enjoined it would be settled in three days (cf. R. 41) he could not find that the strike "if permitted to continue . . . will imperil the national health or safety." The district court must, in short, make a determination as to the effect on the nation if the strike is not enjoined and, to do so, he must make a determination as to whether it is likely or unlikely, in that event, that the strike will be settled.

The Government was aware of this necessity in the District Court. It tendered to the District Court (R. 202) and the District Court adopted, a finding stating that, unless

enjoined, "the strike will continue for an indeterminate period" (R. 245). We are not sure what kind of a "finding" this is, other than that the court was unable to determine how long the strike would continue. If it was meant to suggest that the strike would continue indefinitely, it is plainly contradicted by the only evidence on the subject introduced at the trial. (R. 40-41, 56) Concededly that evidence was only an opinion, albeit an informed one, as to the future course of collective bargaining—but that is precisely the kind of opinion which the statute requires the District Court to express as a "finding."

We believe that the Government in this Court has properly evaluated the "finding" which it asked the District Court to make. "The proceeding before the court would be turned into an elaborate guessing game as to what might or might not happen if an injunction were to issue." (Brief in Opposition, p. 53) Not "would be"—"was." And necessarily so, because in the absence of a finding based on such a "gossamer inquiry" (*id.*) it is impossible to find what the effect on the nation will be if the strike is not enjoined. And this is the "finding" which Congress required.

B. *The Order.*

It is clear, and the Court below unanimously concluded, that the court, after it makes the "jurisdictional" finding as to safety and health, has discretion as to whether the strike should be enjoined or not. The existence of discretion is not, of course, incompatible with the judicial function in determining appropriate remedies. The discretion involved here, however, is necessarily of a different character because there are no wrongs to be remedied; the purpose of the proceeding is to settle a labor dispute between the companies and the union, not to rectify any transgressions by either. As the opinions of the court below indicate, resolution of this kind of problem necessarily places the district court in the

position of making a judgment which is wholly legislative or administrative in character.

One further aspect of the order requires comment. Congress surely did not intend that employees be required to work or, more accurately, be forbidden to concertedly refuse to work, while leaving the employer free to establish, or change, the conditions and terms of employment. And so the district judge must, necessarily, make some determination as to what the conditions of employment will be. The Government proposed, in this case, that the court order that the terms and conditions of the agreements which were in effect on June 30, 1959, be the terms and conditions for the period of the injunction (R. 207) and the court did so. (R. 250) The court thus legislated, even by extending the prior agreements, as to the wages, hours and working conditions of the employees, and made a determination on one of the issues involved in the collective bargaining controversy (R. 48-49). *Cf. Boston Printing Pressmen's Union* v. *Potter Press,* 141 F. Supp. 553, *aff'd,* 241 F. 2d 787, *cert. denied,* 355 U. S. 817.

The District Court is not finished legislating. It has specifically reserved two questions, both of which were critical issues in the collective bargaining which preceded the strike. The first question relates to the provision for adjustments in wages for changes in the cost of living. The continuation of this provision was one of the major issues in the negotiations. As stated by counsel for the employers to the District Court "It was the undeviating position of the companies that no cost of living provision should be included in any new contract." (R. 210). Whether such a provision "should be applicable during the period of the injunction" is an issue specifically reserved by the trial court. (R. 236).

Similarly one of the major issues in negotiation was whether any settlement should be retroactive. The union has contended that a provision for retroactivity should ap-

propriately be contained in the court's decree. (R. 36, 160) The District Court has reserved ruling on this question as well as on the cost of living question. (R. 237)

C. *The Procedure.*

The final anomaly in the provisions of Section 208 should have particular significance to all who have participated, as litigants or judges, in the present case. It is the attempt to adapt judicial procedures plainly not fitted for the task to an 80-day injunction. It simply is not possible to proceed in the normal judicial manner in this kind of a case. In most cases brought under § 208 the Government has chosen to proceed *ex parte* by obtaining a temporary restraining order. Then, after the strike is judicially broken, the case is heard on "preliminary" injunction—a preliminary injunction which never becomes final because it must be discharged within 80 days. Unless a stay is granted the 80-day period is over before the judicial process can be completed—as it was in *United States* v. *United Steelworkers of America* (American Locomotive), 202 F. 2d 132 (1953), in which the Second Circuit affirmed the injunctive order on its 79th day. A union can avoid having its strike broken without any hearing only by agreeing, as the union did in this case, that the case be heard on affidavits, with all the deficiencies such procedure entails.

And it can get review only by the most heroic efforts and by depriving the courts, as the Court of Appeals was deprived here, of the kind of briefing, argument and consideration which is essential to the judicial process.

These anomalies, we submit, are objectionable enough in themselves. More importantly, they are symptomatic of the underlying unjudicial nature of the kind of proceeding which Congress has thrust upon the courts in Sections 206-210. In using the injunction, not as a judicial remedy to correct wrongs or preserve rights, but as an integral but

temporary part of an administrative process designed to settle a labor dispute, Congress has attempted to put the courts in a business for which they are not fitted and which is forbidden to them under our Constitution.

CONCLUSION

For the reasons above stated, it is respectfully submitted that the judgment of the Court of Appeals herein should be reversed and the cause dismissed.

Respectfully submitted,

ARTHUR J. GOLDBERG
DAVID E. FELLER
ELLIOT BREDHOFF
JERRY D. ANKER
1001 Connecticut Avenue, N. W.
Washington 6, D. C.
BERNARD DUNAU
912 Dupont Circle Building, N. W.
Washington 6, D. C.
Attorneys for Petitioner
United Steelworkers of America

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APPENDIX A

THE AVAILABILITY OF SPECIAL STEELS NEEDED FOR MILITARY, AIRCRAFT AND MISSILE PURPOSES

This appendix summarizes information, taken from published sources of which the Court can take judicial notice, as to the availability of special steels which are used for missile and aircraft purposes from plants not currently on strike. The sources used are cited at the appropriate places.

I. Vacuum-Melted Steels

Steel Magazine, a leading trade publication, has compiled and published, on October 26, 1959, a *Metal Selector*, copies of which we have filed with the Clerk of the Court. This document contains a comprehensive listing of alloy steels and other metals, and describes their properties, chemical composition, and typical uses. With respect to vacuum-melted steels, the first group listed (pp. S-3 to S-6), the *Metal Selector* also names the producers of these steels.

"Vacuum-melting techniques are employed in the case of some steels to obtain improved physical and mechanical properties unobtainable in any other way." United States Steel Corp., *The Making, Shaping, and Treating of Steel*, 357 (7th ed. 1957). An examination of the uses of vacuum-melted steel, as described in the *Metal Selector*, will reveal that this type of steel is especially adapted for missile and aircraft purposes, because of its combination of "strength, heat resistance, and workability." (*Metal Selector* S-2) A few of the properties and uses of typical vacuum-melted metals are as follows:

W545: Highly stressed parts in missiles and turbines.

300M: Ultrahigh strength steel pressure vessels, structural parts, airframe components.

AISI 316: High resistance to corrosives affecting other stainless steels; high creep resistance.

Greek Ascoloy: Heat resisting steel for jet engine

compressor blades, turbine discs and auxiliary parts.

Inductovac 18-8B: Atomic energy applications, such as neutron control rods.

AISI 51100: Bearing material, . . . high fatigue strength, low frictional torque. Jet engine bearings.

AISI 347: Crack free core wire for welding and miscellaneous uses. Jet engine parts in cyclical heat zone.

Of the 23 producers of vacuum-melted steel which are named in the *Metal Selector*, only three are involved in this strike: Allegheny Ludlum Steel Corp., Crucible Steel Co., and Republic Steel Corp. These are numbers 1, 6, and 15 in the list. An examination of the vacuum-melted metals and their respective sources will show that the overwhelming majority are not even made by these three companies, and that virtually all which are made by them are also made by some other company or companies. In the few instances in which a particular metal is made only by one or more of these three companies, the *Metal Selector* shows that there are other compositions only slightly different which are made elsewhere and have the same essential properties. And, of course, any company not on strike which has the appropriate furnaces can make the steel normally made only by a struck company, by simply using the ingredients in the ratio given in the *Metal Selector*.

Taking the vacuum-melted metals group by group, the *Metal Selector* shows the following:

Nickel-Base Alloys (p. S-3) — Of these 28 compositions 20 are made exclusively by companies unaffected by the strike, 7 are made by one or two companies on strike, and in each case by from 2 to 9 companies not on strike. In only one case is a particular product made only by a company on strike. This is D-979 steel made by Allegheny Ludlum and used in jet engines, for stresses up to 1600 degrees Fahrenheit. However, other alloys made by non-strike-bound companies, such as Nicrotung, made by West-

inghouse Electric Corporation, Blairsville, Pa., is used for "highly stressed parts at 1500-1800 degrees F."

Iron-Base Alloys (p. S-3, S-4)—Of 28 separate compositions, 9 are made exclusively by companies unaffected by the strike, 15 are made by both struck and non-struck companies. Four compositions are made exclusively at struck plants. AMS 6427, for super-strength structural parts, airframe components, is made by Allegheny Ludlum and Republic, but numerous other companies make ultra-strength steel for aircraft uses. Crucible 56, described as "ultra high-strength material for use up to 1100 degrees F." is made only by Crucible. However, of the several other ultra-strength steels available, at least one has a maximum temperature of 1000 degrees. Crucible 218 is made only by Crucible and Potomac A is made only by Allegheny Ludlum, both on strike. These are "ultra-high strength material for use up to 1000 degrees F." As indicated above, numerous other companies not on strike make steels with the same properties.

Alloy Tool Steels (p. S-4)—Of these 27 separate compositions, 11 are made exclusively by companies not affected by the strike. Twelve are made by both struck plants and non-struck plants, and in each case only one or two struck plants make the particular grade of steel, whereas as many as 10 non-struck plants make the same steel.

Of the 4 compositions made only by plants on strike, one is Ferrovac, a die steel made by Crucible Steel Company, but numerous non-struck companies make other steels with the identical properties. A second composition made only by a struck plant is HTB-3, made by Allegheny Ludlum, for jet engines and other high-temperature applications. Again, non-struck plants make numerous compositions with the identical properties. Third is Rex Super Cut, "a tool steel for high-temperature bearings," made by Crucible, but AISI T-1, for example, made by 8 companies not on strike is also "a tool steel for high-temperature bearings". Fourth

is Teton, "a high compressive strength and abrasion-resistant steel" made by Allegheny Ludlum. Numerous other companies make similar steels, as for example, HTB-1, which has properties of high-temperature bearings for jet engines.

Cobalt Base Alloys (p. S-5)—Two of these 4 separate compositions are made exclusively by companies not on strike, and each of the other two are made by two companies on strike and 4 companies not on strike.

High Temperature Alloys (p. S-5, S-6)—Of these 39 separate compositions, 17 are made exclusively by companies not on strike; 18 both by companies on strike and not on strike; and only 4 exclusively by companies on strike.

Of the four, two are AISI-304 and 305, high-temperature service corrosive-resistance steels made by Allegheny Ludlum and Republic. But numerous other companies make similar steels with similar properties, as for example AISI-310, "high-temperature service under corrosive conditions," which is made by 6 companies not on strike. The third type is a 418 Special, made by Allegheny Ludlum, which is heat resisting steel for jet engine compressor blades. Several other companies not on strike make precisely the same steel under a different trade name. And fourth is Ferrovac 304-B, an atomic energy steel for such things as neutron control rods. But the Universal Cyclops Steel Corporation, which is not on strike, makes not only precisely the same steel, but also another with the same application.

Miscellaneous Alloys (p. S-6)—Twenty-one of these compositions are made by companies which are not defendants in this case. The remaining two are made only by Crucible Steel Corp. One is used principally for electronic tubes—an item which presumably is not in short supply. The other, Ferrovac 42 percent Ni has the same essential properties as Hipernik, which is made by a company not on strike.

2. Other High Alloy Steels

The other special steels listed in the *Metal Selector* are all high alloy steels of various kinds. These steels are made in electric furnaces. See United States Steel Corp., *The Making, Shaping, and Treating of Steel,* 338-39 (7th ed. 1957). The following table, taken from American Iron & Steel Institute, *Annual Capacities of Coke Ovens, Blast Furnaces and Steelmaking Furnaces as of January 1, 1959* (pp. 13-26) shows that companies which are not parties to this action have 35.04 percent of the total electric furnace capacity of the nation. These companies are able to make "the entire range of stainless steels, super-alloy steels for high temperature applications, and high-speed and other alloy tool steels." *The Making, Shaping, and Treating of Steel* at 339.

TABLE I.

ELECTRIC FURNACE STEEL CAPACITY OF STEEL MILLS STILL IN OPERATION

Company	*Electrical Furnace Steel Ingot Capacity (Net Tons)*
ALABAMA	
Kilby Steel Co.	34,020
Porter, H. K., Co., Inc.	
Connors Steel Div.	115,000
Southern Electric Steel Co.	66,000
ARIZONA	
Yuba Consolidated Industries, Inc.	
Western Rolling Mills Div.	60,000
CALIFORNIA	
Armco Steel Corp.	50,000
Southwest Steel Rolling Mills, Inc.	45,000
CONNECTICUT	
Carpenter Steel Co.	
Carpenter Steel of New England, Inc.	84,000

FLORIDA	
Florida Steel Corp.	43,000
GEORGIA	
Atlantic Steel Co.	276,000
ILLINOIS	
Columbia Tool Steel Co.	6,600
Finkl, A., & Sons Co.	33,600
INDIANA	
Borg-Warner Corp.	
Ingersoll Steel Div.	64,000
Joslyn Mfg. & Supply Co.	37,500
KENTUCKY	
Jessop Steel Co.	
Green River Steel Corp.	183,190
MARYLAND	
Eastern Stainless Steel	80,000
MICHIGAN	
Allegheny Ludlum Steel Corp.	3,000
Ford Motor Co.	221,450
MISSISSIPPI	
Mississippi Steel Corp.	45,000
NEW YORK	
Simonds Saw & Steel Co.	21,600
Wickwire Bros., Inc.	32,440
OHIO	
American Compressed Steel Corp.	21,600
Armco Steel Corp.	293,000
Copperweld Steel Co.	660,000
Timken Roller Bearing Co.	700,000
OREGON	
Gilmore Steel & Supply Co., Inc.	
Oregon Steel Mills	150,000

PENNSYLVANIA	
Alco Products, Inc.	2,800
Armco Steel Corp.	74,000
Baldwin-Lima-Hamilton Corp.	
Standard Steel Works Div.	18,790
Carpenter Steel Co.	87,500
Continental Copper & Steel Industries, Inc.	
Braeburn Alloy Steel Div.	20,730
Erie Forge & Steel Corp.	50,000
Firth Sterling Steel Corp.	20,040
General Tire & Rubber Co.	
Byers, A. M., Co.	90,000
Heppenstall Co.	
Midvale-Heppenstall Co.	56,900
Jessop Steel Co.	35,800
Latrobe Steel Co.	24,000
Merritt-Chapman & Scott Corp.	
Milton Steel Div.	90,000
Mesta Machine Co.	
W. Homestead	20,000
National Forge & Ordnance Co.	25,000
Penncoyd Steel & Forge Corp.	15,600
Phoenix Steel Corp.	
Phoenix Steel Plate Div.	40,000
Union Electric Steel Corp.	25,000
Universal-Cyclops Steel Corp.	77,410
Vanadium-Alloys Steel Co.	12,000
Colonial Steel Co. Div.	30,000
TENNESSEE	
Knoxville Iron Co.	38,000
TEXAS	
Cabot, Godfrey L., Inc.	16,200
Cameron Iron Works, Inc.	58,800
LeTourneau, R. G., Inc.	90,000
Texas Steel Co.	132,450

VIRGINIA	
Newport News Shipbuilding & Dry Dock Co.	15,000
Roanoke Electric Steel Corp.	25,000
WASHINGTON	
Isaacson Iron Works, Inc.	102,000
WEST VIRGINIA	
Porter, H. K., Co., Inc.	110,000
TOTAL	4,729,[illegible]

Or 35.04 percent of the 13,495,130 total industry electric furnace steel capacity.

The remaining question is whether these non-struck companies can make these alloy steels in sufficient quantities to satisfy defense needs. The answer is yes, because the quantities which are required are in fact very small. The total amount of steel shipped to the aircraft and guided missiles and satellite industries in 1958 was 62,209 tons, including 16,127 tons of carbon or ordinary steel, 14,941 tons of stainless and heat-resisting steels, and 31,141 tons of other alloy steels. American Iron & Steel Institute, *Charting Steel Progress—A Graphic Facts Book on the Iron and Steel Industry* 42 (1959 ed.). Total steel shipments for the same year amounted to 59,914,433 tons of steel products, including 56,077,092 tons of carbon or ordinary steel, 493,492 tons of stainless and heat-resisting steels, and 3,343,849 tons of other alloy steels. Thus, the aircraft, missile and satellite industries require only a tiny fraction of 35 percent of all alloy steels produced in this country, and therefore require only a tiny fraction of the amount of such steel which the plants now operating are capable of producing.

Almost all companies in the table above have their own rolling facilities. See American Iron & Steel Institute, *Directory of Iron and Steel Works of the United States and Canada* (1957), which lists the steel-making and steel

finishing facilities of every company in the country. If in a particular case the Government would need a particular product which cannot be rolled at one of these plants, it could easily have the rolling done elsewhere, since, as the "Directory" shows, there are scores of companies other than those with electric furnace capacity which have rolling mills and are not on strike.

APPENDIX B

THE KAISER STEEL CORPORATION

On October 26, 1959, the strike at Kaiser Steel Corporation, one of the defendants below, was settled when a new collective bargaining agreement was signed between that company and the United Steelworkers of America. (R. 319-20) The purpose of this appendix is to describe the facilities at Kaiser Steel which were not working when this action was brought, but which are now in operation. All the information is taken from Longenecker, "Kaiser Steel Appropriates $214,000,000 to Expand Its Services to the Growing West," *Blast Furnace and Steel Plant* (August, 1958).

The steel plant of the Kaiser Company at Fontana, California, occupies 1800 acres and employs approximately 8,000 persons. Raw materials come from Kaiser's own properties. Iron ore is mined at Eagle Mountain, 163 miles from Fontana. In 1957, 2,373,613 net tons of ore came from Eagle Mountain. The company, however, purchased 180,640 net tons of ore from other sources. Eighty-three percent (83 percent) of the coal came from the company's Sunnyside mine in Utah, and the Raton Mine in New Mexico. The remaining 17 percent was purchased from other companies. A total of almost 1,900,000 tons of coal was used in 1957. Limestone comes from Cushenberry, California, where the Permanente Cement Company has a quarry some 75 miles from Fontana. Additional limestone is brought in from Nevada.

Coke Works

Processing begins with the coke plant. There are 7 batteries of 45 ovens each, with a combined daily carbonizing capacity of 6,600 tons. In addition to coke, coke oven gas, tar, naphtha, phenol, benzol, toluol, xylol, and ammonia sulphate, or diammonium phosphate is obtained in the Coppers by-products plant. Part of the coke oven gas is used

in the plant's furnaces and the rest is consumed by the Southern California Edison electric power generating station located adjacent to the Kaiser plant.

Blast Furnaces

There are four blast furnaces, the first having been built in 1942 and the fourth in 1958. The total annual pig iron capacity of the four is 1,912,100 tons. Adjacent to the blast furnaces is a sintering plant with two machines, each with a daily production of 1900 tons of sinter.

The Basic Oxygen Plant

Completed only this year, the basic oxygen plant has an annual capacity of 1,440,000 tons of LD steel. There are three 65-ton furnaces.

The Open-Hearth Department

There are 9 open-hearth furnaces, 5 of 185 tons capacity and 4 of 200 tons. Ninety-eight percent (98 percent) of the heats are carbon and 2 percent are low-alloy.

Soaking Pits

Seventeen batteries with an annual capacity of 2,933,000 tons.

Hot Rolling Mills

1. The Slabbing Mill.

This universal reversing mill was completed in 1958. It rolls slabs from 2½ in.-7 in. thick, from 20 in.-72 in. wide, and from 6 feet to 22 feet long, from a 40,000-pound 23 in. x 78 in. x 82 in. ingot.

2. The Blooming Mill.

A 2-high, 46 in. mill stand having 38 in. diameter rolls handling ingots from 23 in.-25 in. minimum and 30 in.-56 in. maximum, rolling them into slabs 4 in.-10 in. thick, up to 36 in. wide and 60 in.-216 in. long, or into blooms 5 in.

x 5 in. to 8 in. x 17 in., or beam blanks for 8 in. H-beams, 10 in.-wide flange beams, or I-beams or channels over 12 in.-20 in.

3. The Plate Mill.

Operated in conjunction with 3 slab re-heating furnaces and an edger with 44 in-diameter, 30 in. long rolls. The plate proper consists of 2 hot rolling mills, a 2-high mill which follows the edger, and then a 4-high mill. Slabs partially reduced on the 2-high mill are cross-rolled or straight away finished on the 4-high mill. The 4-high mill has 38 in.-diameter, 148 in.-long work rolls. The 4-high mill is followed by a retractable light leveller. Plate, after leaving the 4-high hot rolling mill, is transferred to leveling and shearing operations.

4. The Structural Mill.

This consists of 3 hot mills, a roughing, an intermediate, and a finishing stand. The roughing and intermediate stands are 3-high, and the finishing stand is 2-high. The structural mill is operated in conjunction with the re-heating furnace, straighteners, shearers, and the like.

5. Merchant Bar Mill.

Produces round, square, and flat steel bars, as well as small structural shapes There are three merchant bar mill stands.

6. The Skelp Mill.

The skelp mill is operated in conjunction with the merchant bar mill. It has 10 horizontal and 2 vertical stands.

7. The Electric Weld Pipe Mill.

Pipe from 4½ in. to 12¾ in. in diameter, with a wall thickness of .188-.500 in. can be produced from skelp. The mill forms, welds, and straightens the pipe.

8. Continuous Weld Pipe Mill.

Pipe from ½ in.-4 in. in diameter, wall thickness of from .106 in.-.318 in., is rolled on a Fretz-Moon type mill consisting of 13 stands.

9. The Hot Strip Mill.

This is operated in conjunction with three continuous slab furnaces. The hot strip mill consists of 4 separate hot rolling mill operations:

a. The preheated slabs first go through the scale-breaker;
b. They then go through a 136 in. broadside mill;
c. Then through four 89 in. roughing stands;
d. Finally, they enter a 6-stand finishing mill located almost half a mile from the furnaces.

10. Strip Mill Finishing Department.

This contains a 2-high skinpass mill, together with levelers; a trimming line; a shearing line; a slitting line; a squaring shear; and finally, a shearing and leveling line.

11. Cold Reduction Mill.

This consists of 5 4-high tandem stands.

12. Other Strip Mill Auxiliary Equipment.

There is an electrolytic cleaning line; tinplate mill annealing furnaces; a continuous cleaning and annealing line; two temper rolling mills; and various coil preparation units.

The plant has its own electric power generators. Its maintenance department has its own foundry, forge, and weld shop, roll shop, and the like.

APPENDIX C

AMOUNTS OF COAL USED FOR HEALTH AND SAFETY IN 1948 AND 1950

The following table, based on United States Department of the Interior, Bureau of Mines, *Mineral Industry Surveys—Bituminous Coal and Lignite in 1958* (Released Sept. 9, 1959) shows the distribution of coal and lignite in 1948 and 1950, the years in which coal strikes were enjoined under the Taft-Hartley Act.

Consumption of Bituminous Coal and Lignite, 1948 and 1950
(Net Tons)

	1948		1950	
Consumer	*Amount*	*Percent of Total*	*Amount*	*Percent of Total*
Electric Power Utilities	95,620,000	18.4	88,262,000	19.4
Retail Deliveries	86,794,000	16.7	84,422,000	18.6
Railroads (Class I)	94,838,000	18.2	60,969,000	13.4
Coke Plants				
Beehive	10,322,000	2.0	9,088,000	2.0
Ovens	96,984,000	18.7	94,757,000	20.9
Steel and Rolling Mills	14,193,000	2.7	10,877,000	2.4
Cement Mills	8,546,000	1.6	7,923,000	1.7
Other Mfg. and Mining Industries	110,060,000	21.2	95,862,000	21.1
Bunker, Foreign and Lake Vessel	2,552,000	0.5	2,042,000	0.5
TOTAL OF CLASSES SHOWN	519,909,000		454,202,000	

This table shows that in 1948 and 1950 more than 50 percent of the coal consumed related to the national health and safety. Of the 519,909,000 tons of bituminous coal and lignite consumed in 1948, 95,620,000, or 18.4 percent, were used by electric power utilities; 94,838,000, or 18.2 percent, were used by Class I railroads; and 86,794,000, or 16.7 percent, were taken by retail deliveries, which for the most

part means residential heating. In addition to this, large quantities of coal were carbonized into coke, thus producing gas, some of which went into city mains. Coke was also used for residential heating. Therefore, in the year 1948 more than 277,252,000 tons, or over 53.3 percent, of total consumption of coal and lignite was used for purposes necessary to the national health or safety. Of course, additional amounts would be included under other categories. Other manufacturing and mining industries, for example, would include munitions and armaments factories, so this figure of 53.3 percent understates the amount.

For 1950, the totals are: Electric power utilities, 88,262,000 tons, or 19.4 percent of total consumption of bituminous coal and lignite; Class I railroads, 60,969,000 tons, or 13.4 percent of total consumption; retail deliveries, 84,422,000 tons, or 18.6 percent of total consumption; or a grand total of 233,653,000 tons, or 51.4 percent plus the considerable quantity of coal which, carbonized into coke, was used to produce gas for city mains and residential heating.

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No. 504

In the Supreme Court of the United States

OCTOBER TERM, 1959

UNITED STEELWORKERS OF AMERICA, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

SUPPLEMENTAL BRIEF FOR THE UNITED STATES

WILLIAM P. ROGERS,
Attorney General,
J. LEE RANKIN,
Solicitor General,
GEORGE COCHRAN DOUB,
Assistant Attorney General,
WAYNE G. BARNETT,
Assistant to the Solicitor General,
SAMUEL D. SLADE,
SEYMOUR FARBER,
HERBERT E. MORRIS,
Attorneys,
Department of Justice, Washington 25, D.C.

INDEX

CITATIONS

	Page
Cases:	
Arizona v. *California*, No. 9 Original	21
Debs, In re, 158 U.S. 564	21
United States v. *Republic Steel Corp.*, pending this Term, No. 56	21
Wisconsin, et al. v. *Illinois*, Nos. 2, 3, 4 Original	21
Statutes:	
Clayton Act, 15 U.S.C. 18	20
Defense Production Act of 1950, 50 U.S.C. App. 2071(a)	9
Fair Labor Standards Act, 29 U.S.C. 201	21
Rivers and Harbors Act of 1899, 33 U.S.C. 403	21
Robinson-Patman Act, 15 U.S.C. 13	20
Sherman Act, 15 U.S.C. 1-2	20
Universal Military Training and Service Act, 50 U.S.C. App. 468	9
Webb-Pomerene Export Trade Act, 15 U.S.C. 65	20
15 U.S.C. 72	20
Miscellaneous:	
H. Rep. 245, 80th Cong., 1st Sess., p. 114	3

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SUPPLEMENTAL BRIEF FOR THE UNITED STATES

As we have previously indicated to the Court, our brief in opposition to certiorari will also serve as our primary argument on the merits. In the main, we believe that that brief adequately answers the contentions now made or suggested by the petitioner. However, it may be helpful to add some supplementary comments on certain of the arguments in the certiorari petition, particularly those in which petitioner appears to have shifted its positions from the ground taken in the courts below.

I

Basic to all its other contentions is petitioner's primary argument that the impact of the strike on

the economy as a whole is immaterial, and that the justification for the injunction can be found only in specific shortages of steel for specific defense projects. For none of petitioner's other contentions is relevant to the finding of the burgeoning economic dislocation resulting from the strike. No deficiency or lack of specificity of the evidence supporting that finding is or can be claimed. If necessary, in fact, the Court could take judicial notice of the inevitable and widespread ramifications on the economy of an exhaustion of steel inventories; the statistics showing the status of steel inventories and the already-experienced unemployment fully establish the imminence of great economic disruption. That effect plainly flows, not from the absence of the production of a few isolated plants (as is erroneously said to be the cause of the defen shortages), but from the entire strike. And petitioner does not claim that the general economic crisis could be forestalled by a decree reopening only a small number of plants or otherwise suggest any ground for the exercise of an asserted discretionary power to deny or limit the injunction notwithstanding the general peril to the economy.

Thus, petitioner's entire case depends upon sustaining its initial contention that an economic crisis does not affect the "national health or safety" as those terms are used in the statute; as we have shown in our main brief (pp. 46–51), that contention must fail. We will add here only that nothing in the statements of Congressman Kennedy, upon which petitioner relies (Pet. 14–15), is inconsistent with our interpre-

tation of the Act.[1] That he objected to a "public interest" standard because it "could cover anything" does not mean that he gave to "health or safety" the rigidly circumscribed meaning attributed to that phrase by petitioner. The natural meaning of his comments was that he thought that "health or safety" was a sufficiently flexible standard to make unnecessary the addition of the much broader "public interest" standard. That is confirmed, moreover, by the supplemental minority report filed by Congressman Kennedy when the House committee reported out the bill. Although similarly objecting there that the "word 'interest' is weak and indefinite"—as well as objecting to the temporary nature of the injunction because a strike which "imperils the public health or safety * * * should continue to be illegal as long as the emergency exists"—he agreed that "some method must be worked out to deal with strikes which *cripple the Nation's industrial power*." [Emphasis added.] H. Rep. No. 245, 80th Cong., 1st Sess., p. 114. Since he then proposed, to "achieve this goal", an amendment providing for a permanent injunction upon a finding that a strike "imperils the public health or safety" (*ibid.*), it is clear that he viewed "public health or safety" as a sufficiently broad stand-

[1] We may point out also that those comments, made on the floor of the House in opposition to the House bill and rejected by the House itself, are in any event hardly an authoritative source for the meaning of a bill separately drafted in the Senate and substituted for the House bill. Indeed, since the declaration of policy in the Act as finally passed contained the very language to which Congressman Kennedy objected (see Br. in Opp., pp. 47-48, n. 26), it may be inferred that the Senate draftsmen and the conferees did not accept his view.

and to encompass strikes "which cripple the Nation's industrial power." Petitioner's recital of legislative history thus can prove, at most, only that "national health or safety" and "public interest" are not synonomous—with which we may readily agree—and not that the former relates exclusively to biological health and military preparedness. Though more limited than "public interest" and suggesting a greater immediacy and severity of the threat, the "national health or safety" may nevertheless be imperiled, in Congressman Kennedy's own use of those terms, by strikes "which cripple the Nation's industrial power."[2]

II

The bulk of petitioner's contentions proceed, as we have noted, on the assumption that the finding that the national health or safety is imperiled can be sustained only on the basis of shortages of steel for essential defense projects. Most of the arguments based on that assumption have been answered in our main brief, and we will deal here only with the con-

[2] The statement by Congressman Kennedy that "an automobile strike * * * does not affect health and safety" (Pet. 15) is fully consistent with our position, for a strike in the automobile industry would have much less effect on the economy as a whole than a steel strike—for the simple reason that the steel industry produces a basic raw material essential to the rest of the economy while the automobile industry produces end-products on which a much smaller part of economy is dependent. However, even a prolonged automobile strike might ultimately have sufficiently grave effects on the economy—more likely through a multiplying diminution of general purchasing power than through a shortage of automobiles—to reach an emergency stage.

tentions (a) that the national defense peril does not result from a strike affecting a "substantial part" of the industry, and hence that the jurisdictional prerequisites were not established, and (b) that the court below failed to exercise its discretion.

A. Petitioner contends that the jurisdictional requirements have not been met because less than a "substantial part" of the industry would have to be reactivated to meet essential defense needs. Aside from the basic error in the factual assumption,[1] the premise that the part of the struck industry that is essential must itself constitute a "substantial part" of the industry is, we believe, patently untenable under the Act. According to that interpretation, for example, if a strike affecting 50% of the coal industry would not imperil the national health and safety, a strike affecting 60% of the industry could not be enjoined even though it did imperil the national health and safety unless it could be shown that the marginal 10% that made the strike an emergency was itself a "substantial part" of the industry. Clearly, if the portion of the struck industry that is "essential" is relevant at all, it is relevant only to the proper scope of the relief to be granted (discussed *infra*) and not to the court's jurisdiction. The jurisdictional prerequisites are met if, as is admittedly true here, the portion of the industry that is *struck* is a "substantial part" and a continuance of the *entire* strike would imperil the national health or safety.

[1] As we shall later show, in this case the number of plants that would need to be reopened to meet defense needs would in fact probably constitute considerably more than a substantial part of the industry.

B. It is and has been our position that, once the statutory conditions have been met, the injunction provided for by the statute should issue as a matter of course, at least in the absence of a showing of exceptional circumstances by the defendant justifying a discretionary denial or limitation of the injunction. Because of the emphasis placed by petitioner on the district court's alleged failure to exercise, or abuse of, its discretion, it is appropriate to spell out in greater detail the basis for that position.

1. Section 208 of the Act provides simply that if the court finds that a strike is industry-wide and "will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike." But while phrased in terms of "jurisdiction", the statute, by its own force, also creates a substantive "right" in the Government. Without that, there would be nothing upon which to exercise the granted jurisdiction. See Br. in Opp., pp. 32 *ff*. The content of that substantive right cannot, from the terms of the statute, be defined other than as a substantive right to have the injunction issue when the statutory conditions are met. In terms, moreover, that right extends to having the entire strike—*i.e.*, "such strike"—enjoined; it is not limited to having only so much of the strike enjoined as will alleviate the emergency (even if that were possible).

Under the statute the injunctive remedy and the substantive right are thus indissolubly joined together. This is not a case in which the equitable jurisdiction of a court is invoked to provide one remedy for a gen-

eral right otherwise existing and otherwise remediable. For that reason, the usual doctrines of equitable discretion—part of the law of "remedies"—cannot be uncritically applied; to the extent that they are applied, they qualify or modify the very right which Congress has created in the Government. It is entirely appropriate to conclude, therefore, that Congress, having expressly stated the conditions under which the United States is entitled to an injunction, intended the district court to have at most only a very narrow discretion to decline to issue the injunction when those conditions were met. The same inference is to be drawn from the very nature of the showing that must be made to satisfy the statutory conditions—namely, a peril to the national health or safety, an interest so dominant that Congress must have viewed it as normally overriding any lesser interests that might otherwise appeal to a court's equitable discretion.

At the very least, the terms of the statute give the Government a prima facie right to the injunction upon satisfying the statutory conditions, and the burden is then on the defendant to demonstrate the extraordinary circumstances that might justify modification of that right. Petitioner, as we shall show, has made no such showing in this case.

2. In the district court, petitioner contended that, even if the statutory prerequisites were established, the court should nevertheless in its discretion deny the injunction for two reasons. It argued, first, that a denial of the injunction would produce a prompt

settlement and that the public interest would better be served by a settlement than by an injunction; and, second, that the Government had other adequate remedies to meet its essential defense needs.[2] The court properly found both bases to be inadequate to justify denial of the injunction.

For reasons shown in our main brief (pp. 52–57), the likelihood that the dispute might be settled without the injunction, even if it could be established, is not a valid basis for a discretionary denial of the injunction, for the very essence of the national emergency provisions is the Congressional judgment that the public interest in an immediate termination of a work stoppage imperiling the national health or safety overrides any interest in allowing the parties to proceed, without interference, to settle their dispute by the normal processes of collective bargaining. Without more, therefore, the court could properly have rejected petitioner's proposed conclusion of law (R. 215) that the court "has discretion * * * to deny an injunction when the public interest will best be served by settlement of the strike through good faith bargaining and not by the issuance of an injunction." In fact, however, the district court did not stop there

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[1] Memorandum for the United Steelworkers (filed in the district court), pp. 29–30.

[2] Memorandum, pp. 13–15, 23–27. In terms, that contention was made, not as an appeal to the court's discretion, but to show that the national health and safety was not in fact imperiled by the strike and hence that the jurisdictional requirements were not met. We will assume, however, that it could also be read as an attempt to invoke the court's discretionary powers to deny the injunction.

but went on to find as a fact, based on the report of the board of inquiry, that "the strike will continue for an indeterminate period" unless the injunction is granted (R. 245).

The showing of the other remedies available to the Government was no more adequate. As we have pointed out in our main brief (pp. 10, 14, 43–46), the priority and allocation powers under the Defense Production Act of 1950 (50 U.S.C. App. 2071(a)) do not meet the conceded fact that some items essential to the national defense are not produced by any of the mills now operating; and there are other major difficulties.[*] The power of seizure under the Universal Military Training and Service Act (50 U.S.C. App. 468) is likewise totally inadequate. In terms, it authorizes the President to seize a plant—from which materials have been unsuccessfully ordered—solely for the purpose of producing such "materials as may be required by the Government." Petitioner no longer disputes that reactivating a steel plant solely to supply the limited needs of the Government would be an exhorbitantly costly and wasteful use of

[*] The petition (Pet. 21 2) claims that the Government has not as yet made sufficient use of its priority and allocation powers. But the fact is that, under the defense certificate system which has been in effect for some time, defense needs have been given priority by the mills still operating to the extent allowable by existing production and inventories. The order of the Business and Defense Services Administration of October 16, 1959 (which petitioner criticizes) was simply designed to facilitate delivery of steel for defense purposes on the reopening of the struck plants, by modifying the priority system to take account of problems resulting from a simultaneous reopening of many plants.

our steel-producing facilities, and there is at least a very serious question whether the Government, to avoid economic waste, would have the incidental power to reopen the seized plant for all purposes. Moreover, all the objections noted *infra* to an injunctive decree reopening only selected plants would equally apply to the use of a selective seizure power, and would, in fact, be aggravated by the inevitable delays in setting the seizure procedure in motion. Finally, as we have noted (Br. in Opp., p. 45), there is no basis for inferring that Congress intended to give priority to the seizure powers and require them to be exhausted first before utilizing the Taft-Hartley procedures, and the latter in fact was clearly the procedure specifically designed to deal with nation-wide strikes. Again, however, the district court did not rest on the lack of any compulsion on the Government to utilize other procedures first, but went on to find specifically both that priority orders were unavailing because many of the special items needed "are not carried in inventory or produced by the plants still in operation" (R. 246) and that there was "no adequate remedy at law" (R. 247, 248).

Notwithstanding the court's specific consideration and rejection of the very claims for discretionary

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[7] Petitioner's offer voluntarily to "cooperate" with the Government in reopening whatever plants could be shown to be essential (Pet. 24) is likewise subject to those same objections. Moreover, even if those problems did not exist, we do not think the Government could be required to forego its statutory remedy and rely instead for the protection of the national health or safety upon its being able successfully to "bargain" with the union for the reopening of selected plants.

denial of the injunction put forward by petitioner, petitioner now claims (Pet. 22–23) that the district court denied that it had any discretion at all. If petitioner means that the district court did not engage in an abstract speculation whether any circumstances might ever exist which would justify discretionary denial of the injunction, but confined itself to finding that the circumstances put forward by petitioner were inadequate, we may readily agree, for that is all the court had any obligation to, or could properly, decide. If petitioner means that the court refused to consider the equitable considerations put forward by it, that is simply not so, as the foregoing discussion of those contentions demonstrates. Petitioner notes, however, that the court overruled its proposed conclusion of law "that the court had discretion" (Pet. 23), but as noted above the conclusion rejected was not that the court had discretion in the abstract but rather that the court had discretion to deny the injunction because the public interest would better be served by a negotiated settlement (R. 215), an untenable basis for denial of the injunction. Petitioner again notes the "failure of the District Court even to inquire into the matters properly bearing on the exercise of his discretion" (Pet. 24), which reflects a total misconception: the duty was that of petitioner to present a valid basis for the court's exercise of discretion, not of the court to seek out some basis.

Finally, in addition to the careful consideration given by the court to each contention made by petitioner, there is affirmative evidence that the court

assumed that it had the usual powers of an equity court. Not only did it state as its finding of fact and conclusion of law that the strike will "cause irreparable damage and injury to the United States" and that there is "no adequate remedy at law" (R. 247, 248)—the traditional formula for the exercise of equitable powers—but when, in a discussion of the retroactivity issue, it was suggested that "the court, being a court of equity, has the right to impose conditions on his order that the court may deem equitable", the court replied that "I understand that I would have that right" (R. 238). There is, therefore, no basis for petitioner's assertion that the district court failed to "exercise" its discretion, and the implied assertion that it abused its discretion in issuing an injunction is, as we have seen, equally unavailing. In addition, the trial court's exercise of its discretion comes to this Court armed with the explicit finding by the Court of Appeals that there was no abuse (see R. 306–310).

3. Petitioner contends finally that the district court abused its discretion by failing to limit its injunction to the minimum number of plants required to meet essential defense needs. A sufficient answer is that that claim, which looms so large in this Court, was not made at all to the district court. Although petitioner did assert that the shortages of essential items resulted from the shut-down of a limited number of mills producing those items and not from the general strike, that was directed only to petitioner's argument that the *jurisdictional* prerequisites were not met because the peril did not flow from a strike

against a "substantial part" of the industry (the argument discussed as Point II (A), *supra*, and at Pet. 15–19). Petitioner, in short, limited itself to opposing the issuance of *any* injunction, and did not propose a decree restricted to reopening only a part of the industry or make any effort to show that such a decree would be proper or could feasibly be framed.

We need not rely, however, only on petitioner's failure to make the claim in the district court, for it is demonstrable that such a limited decree could not in any event provide a practical solution for the current emergency.

a. Petitioner has now abandoned any claim that mills could feasibly be reopened solely to serve defense needs and concedes that any plants reopened would have to be reopened for all purposes (Pet. 18–19). We take it that the concession extends to reopening whatever integrated complex of mills and supporting facilities would be necessary for efficient operation by the affected companies. Petitioner fails to realize that its concession would probably require the reopening of a large proportion of the struck plants, and that, even if a smaller number would suffice, problems of enormous complexity would be encountered in framing such a decree.

First, it must be determined what steel products are and will be needed for essential defense programs. While the shortages that have already been encountered have related primarily to rather specialized items—*e.g.*, a special stainless steel needed for the ATLAS missile—the planning cannot end there. As wartime experience has taught, delays can be caused by want

of a horseshoe nail (or its modern-day equivalent, the cotter-pin) no less than by want of a nose-cone, and avoidance of bottle-necks requires programming of the needs of the fourth-tier supplier as well as of the contractor working at the launching pad. While the pinch on suppliers using unspecialized kinds of steel may not yet have been felt because of their initially large, but now vanishing, inventories, the lead-time necessary to reactivate plants and process the steel into the necessary product requires that their needs months hence be anticipated at this time and provided for in determining which plants should be reopened and in establishing an allocation system to assure that available steel is channeled to essential uses. While it might conceivably be possible to develop such an over-all plan, as shown by the efforts during World War II, it would not be possible, short of total mobilization, to create a comparable plan for the short-term purposes of a strike—a plan which would be both effective and non-discriminatory. And, in any event, there would have to be clear Congressional authorization.

Even if defense needs were already fully programmed, moreover, there would remain the no less overwhelming task of reorganizing the steel industry to operate on a minimum basis adequate to supply those needs. The first problem would be that of selecting which of several companies that could equally supply a particular need should be reopened, and no one has yet suggested an equitable basis for a selection having such serious consequences both to the companies involved and their employees. And

whatever basis were arrived at, serious inequities would be inevitable. For example, while there is no evidence in the record on the question—since the district court was not asked to and did not undertake such a task—we are reliably informed that there are some items for which the largest companies, United States Steel and Bethlehem Steel, are the sole source, and it would be essential to reopen their plants. Since the economic unit of operation for those companies is likely to be great, in order to minimize the number of mills to be reopened it would be necessary to satisfy defense needs as much as possible out of the production of those companies incidentally necessary to their production of the sole-source items. The result might well be that the largest companies would be restored to almost full production while the small companies remain struck. The anti-competitive effect of such a result is no less obvious than its inequities.

Having selected the companies to be reopened, the next step would be to determine the minimum unit of production that can be operated efficiently by each company. That judgment could not be based solely on the technical problems of separating out of the integrated mass of operations the facilities essential to constitute a self-sufficient unit. Cost is no less a factor and, because of overhead and the possible indivisibility of at least some of the operations, it is very likely that minimum costs require a larger scale of operation than would physical and technical problems alone. Thus, as to each company, the final judgment would require a detailed cost and engineer-

ing analysis of its entire operations. And even with the necessary information amassed and analyzed, the court would be required to make a judgment of how much additional cost the companies (or, perhaps ultimately, the Government) should be required to bear in order to minimize the scope of their operations.

b. Petitioner avoids dealing with the practical impossibility of planning such a complete reorganization of the steel industry by simply assuming that the burden of proof was on the Government, and asserting that the Government failed to prove that an injunction of the entire strike was necessary. A complete answer is that the statute on its face provides for an injunction of the entire strike once the statutory conditions are met, and the burden is on the defendant to establish the "defense" or "exception" that something less would satisfy the needs of the national health or safety. Petitioner did not make that effort in the trial court.

Moreover, we think that Congress quite wisely avoided imposing on the courts the duty of engaging in any such fruitless inquiry in circumstances such as those present here. Petitioner asserts that it is unreasonable to believe that Congress intended an entire strike to be enjoined simply because of shortages that could be met from a "handful" of mills. When the emergency nature of the proceedings, and the consequent necessity for expedited court proceedings, is recognized, it appears not unreasonable at all. To make use of petitioner's metaphor (Pet. 18), an elephant gun can quite sensibly be used to

bring down a gnat if no other tool is at hand and the gnat is dangerous enough.

There are other cogent reasons, besides the impossibility of completing the inquiry before its need is long past, why Congress would not have wanted to provide for partial injunctions. One, which has already been noted, is the lack of a standard by which to determine which part of the strike to enjoin and the inequity both to employers and employees of a discriminatory reopening of the plants. Another is the questionable nature of the premise upon which petitioner's entire argument is based—namely, that the extent to which the normal processes of collective bargaining are disturbed by an injunction is a factor to be taken into account in melding the scope of the injunction.

But for the effect upon the bargaining position of the parties, equitable considerations would point toward enjoining the entire strike, for even if some of the production is not "essential" its restoration is certainly in the public interest and in the immediate interest of both employers and employees. The countervailing "equity" upon which petitioner asks for a decree limited to part of the industry cannot be that a partial injunction would give it a stronger, and the companies a weaker, bargaining position than

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Were the court to undertake a hearing to devise a limited decree capable of protecting the national health or safety while minimizing its scope, it would have little choice, if the statutory purpose were not to be defeated altogether, but to grant a preliminary injunction against the entire strike, pending the inquiry. We think it evident that the necessary inquiry could not be completed until the maximum 80-day period had long since expired.

would a total injunction—for there is no basis to prefer one party to the other. The argument must rather be that the general policy to promote unfettered collective bargaining requires, if possible, that the injunctive decree be so framed as to *minimize* its effect on the bargaining positions of the parties. Petitioner's only valid claim is not that the knife should cut in its favor rather than in favor of the employers, but that it should cut as little as possible.

Petitioner simply assumes that a decree enjoining part of the strike would have less total impact on the bargaining positions of the parties than would one enjoining the whole strike. But that assumption, which is essential to petitioner's entire equitable claim, is not at all self-evident. Assume, for example, that an injunction were issued which restored substantially all of the production of the United States Steel Company and the Bethlehem Steel Company, but not of any others. Such an injunction would probably destroy the united front of the steel companies, and the effect could well be to force the remaining struck companies immediately to acquiesce in the union's demands. At the end of the 80 days, the companies whose strike was enjoined would then be in the same position, and might equally be compelled immediately to settle. Such an injunction would be more favorable to the *union* than one running against the entire strike, and it might well in fact be more favorable to it than a continuation of the entire strike. That does not mean, however, that it would have any less impact upon the bargaining process, and it might well have more. In short, the

effect would obviously be different in kind but not necessarily in degree.

It cannot be assumed, therefore, that the effect of the decree on bargaining is minimized simply by minimizing the scope of the decree. Thus, to support an "equitable" claim to have one kind of decree rather than another, it is not sufficient (or even relevant) to show that one is more limited in scope than another; petitioner must show instead that the bargaining position of the parties will be less disturbed by one than the other. Obviously, however, such effects cannot be quantitatively measured, and we do not believe that Congress intended to put upon the courts the duty of appraising the potential effects of various possible decrees upon such intangible factors. For those reasons, we submit that Congress concluded that there was no appropriate way for the courts to mold their decrees to minimize the effect on the bargaining positions of the parties and that, accordingly, controlling weight should be given to the other more tangible advantages of restoring full production, to satisfy the nation's needs, by enjoining the entire strike.

III

On the constitutional point, the petition adds the new argument that the statutory requirement of a finding that the strike (if continued) "will imperil the national health or safety" is beyond judicial competence, and invalidly requires the judge to be an uncontrolled prophet and an "economist" (Pet. 26–27). This belated contention cavalierly disregards

the history of Anglo-American jurisprudence which has long imposed on courts comparable fact-finding problems to be solved on the basis of the evidence and arguments proffered by the parties. Evaluating future events and making forecasts is a normal part of day-to-day judicial business. And the issue of whether the continuation of a particular strike will imperil the national health *or* safety is at least as concrete and definite as other questions with which the courts have regularly been dealing; it requires no greater degree of unguided prophecy or economic appraisal, but involves conventional factual issues determinable on evidence. The effects of a prolongation of non-production of steel on defense and on the general economy are measurable and definite, as the affidavits in this case. See our main brief, pp. 43 *ff.* Antitrust legislation, for instance, often imposes on the federal courts fact-finding responsibilities of comparable or greater breadth, requiring sophisticated economic appraisal and prophecy.[9] There is also leg-

[9] Cf., *e.g.*, the Sherman Act, 15 U.S.C. 1-2 ("restraint of trade"; "monopolize, or attempt to monopolize", "combine * * * to monopolize any part" of interstate commerce); Clayton Act, 15 U.S.C. 18 (an acquisition will "substantially" "lessen competition, or to tend to create a monopoly"); Robinson-Patman Act, 15 U.S.C. 13 ("the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition"); Webb-Pomerene Export Trade Act, 15 U.S.C. 65 (any act "which artificially or intentionally enhances or depresses prices within the United States" "or otherwise restrains trade therein"); 15 U.S.C. 72 ("intent of destroying or injuring an industry in the United States, or of preventing the establishment of an industry in the United States, or of restraining or monopolizing any part of trade and commerce in such articles").

islation dealing with affects on or obstructions of interstate commerce which requires the courts to make such determinations without administrative guidance.[10] And the adjudication by this Court of disputes between states (or between states and the Federal Government) over interstate waters often involves very complex and difficult problems of economic and social appraisal and evaluation. Cf. *Arizona* v. *California*, No. 9 Original; and *Wisconsin, et al.* v. *Illinois*, Nos. 2, 3, 4 Original. In short, the responsibility Congress has imposed on the federal courts in Section 208 of the Labor Management Relations Act of 1947 does not differ in kind or degree from the responsibilities they have long been bearing. Congress has not asked the courts to go beyond their proper sphere.

[10] Cf., *e.g.*, Fair Labor Standards Act, 29 U.S.C. 201; Rivers and Harbors Act of 1899, 33 U.S.C. 403 (see *United States* v. *Republic Steel Corp.*, pending on writ of certiorari, No. 56, this Term); *In re Debs*, 158 U.S. 564.

CONCLUSION

For the foregoing reasons, and those set forth in our brief in opposition, it is submitted that the judgment below should be affirmed. In that event, we request that the judgment of this Court should issue forthwith under Rule 59 of the Revised Rules of the Court, and that the stay of injunction should also be vacated.

Respectfully submitted.

WILLIAM P. ROGERS,
Attorney General.
J. LEE RANKIN,
Solicitor General.
GEORGE COCHRAN DOUB,
Assistant Attorney General.
WAYNE G. BARNETT,
Assistant to the Solicitor General.
SAMUEL D. SLADE,
SEYMOUR FARBER,
HERBERT E. MORRIS,
Attorneys.

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SUPREME COURT OF THE UNITED STATES

No. 504.—October Term, 1959.

United Steelworkers of America, Petitioner, v. United States of America.	On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[November 7, 1959.]

Per Curiam.

The Attorney General sought and obtained in the District Court for the Western District of Pennsylvania an injunction against the continuation of an industry-wide strike of workers in the basic steel industry pursuant to § 208 of the Labor Management Relations Act, 61 Stat. 155, 29 U. S. C. § 178. We granted certiorari, — U. S. —, to review the judgment of the Court of Appeals for the Third Circuit, — F. 2d —, affirming the District Court. In pertinent part, § 208 provides that if the District Court—

> "finds that . . . [a] threatened or actual strike or lock-out—
>
> "(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and
>
> "(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate. . . ."

The arguments of the parties here and in the lower courts have addressed themselves in considerable part to the propriety of the District Court's exercising its equi-

table jurisdiction to enjoin the strike in question once the findings set forth above had been made. These arguments have ranged widely into broad issues of national labor policy, the availability of other remedies to the executive, the effect of a labor injunction on the collective bargaining process, consideration of the conduct of the parties to the labor dispute in their negotiations, and conjecture as to the course of those negotiations in the future. We do not believe that Congress in passing the statute intended that the issuance of injunctions should depend upon judicial inquiries of this nature. Congress was not concerned with the merits of the parties' positions or the conduct of their negotiations. Its basic purpose seems to have been to see that vital production should be resumed or continued for a time while further efforts were made to settle the dispute. To carry out its purposes, Congress carefully surrounded the injunction proceedings with detailed procedural devices and limitations. The public report of a board of inquiry, the exercise of political and executive responsibility personally by the President in directing the commencement of injunction proceedings, the statutory provisions looking toward an adjustment of the dispute during the injunction's pendency, and the limited duration of the injunction, represent a congressional determination of policy factors involved in the difficult problem of national emergency strikes. This congressional determination of the policy factors is of course binding on the courts.

The statute imposes upon the courts the duty of finding, upon the evidence adduced, whether a strike or lockout meets the statutory conditions of breadth of involvement and peril to the national health or safety. We have accordingly reviewed the concurrent findings of the two lower courts. Petitioner here contests the findings that the continuation of the strike would imperil the national health and safety. The parties dispute the meaning of

the statutory term "national health"; the Government insists that the term comprehends the country's general well-being, its economic health; petitioner urges that simply the physical health of the citizenry is meant. We need not resolve this question, for we think the judgment below is amply supported on the ground that the strike imperils the national safety.* Here we rely upon the evidence of the strike's effect on specific defense projects; we need not pass on the Government's contention that "national safety" in this context should be given a broader construction and application.

*The evidence in this regard is reflected in the District Court's findings of fact Nos. 15 (a), (b), (c), and (d), as follows:

"(a) Certain items of steel required in top priority military missile programs of the United States are not made by any mill now operating, nor available from any inventory or from imports. Any further delay in resumption of steel production would result in an irretrievable loss of time in the supply of weapons systems essential to the national defense plans of the United States and its allies.

"(b) The planned program of space activities under the direction of the National Aeronautics and Space Administration has been delayed by the strike and will be further delayed if it is continued. Specifically, project MERCURY, the nation's manned satellite program, which has the highest national priority, has been delayed by the [illegible] delay in construction of buildings essential to its operation. This program is important to the security of the nation. Other planned space programs will be delayed or threatened with delay by a continuation of the strike.

"(c) Nuclear Submarines and the naval shipbuilding program other than submarines, including new construction, modernization, and conversion, have been affected by reason of the inability to secure boilers, compressors, and other component parts requiring steel. Products of the steel industry are indispensable to the manufacture of such items and delay in their production will irreparably injure national defense and imperil the national safety.

"(d) Exported steel products are vital to the support of United States bases overseas and for the use of NATO allies and similar collective security groups. The steel strike, if permitted to continue, will seriously impair these programs, thus imperiling the national safety."

The petitioner suggests that a selective reopening of some of the steel mills would suffice to fulfill specific defense needs. The statute was designed to provide a public remedy in times of emergency; we cannot construe it to require that the United States either formulate a reorganization of the affected industry to satisfy its defense needs without the complete reopening of closed facilities, or demonstrate in court the unfeasibility of such a reorganization. There is no room in the statute for this requirement which the petitioner seeks to impose on the Government.

We are of opinion that the provision in question as applied here is not violative of the constitutional limitation prohibiting courts from exercising powers of a legislative or executive nature, powers not capable of being conferred upon a court exercising solely "the judicial power of the United States." *Keller* v. *Potomac Elec. Power Co.*, 261 U. S. 428; *Federal Radio Comm'n* v. *General Elec. Co.*, 281 U. S. 464. Petitioner contends that the statute is constitutionally invalid because it does not set up any standard of lawful or unlawful conduct on the part of labor or management. But the statute does recognize certain rights in the public to have unimpeded for a time production in industries vital to the national health or safety. It makes the United States the guardian of these rights in litigation. Cf. *United States* v. *American Bell Tel. Co.*, 128 U. S. 315, 370; *Sanitary District of Chicago* v. *United States*, 266 U. S. 405. The availability of relief, in the common judicial form of an injunction, depends on findings of fact, to be judicially made. Of the matters decided judicially, there is no review by other agencies of the Government. Cf. *Gordon* v. *United States*, 2 Wall. 561, 117 U. S. 697. We conclude that the statute entrusts the courts only with the determination of a "case or controversy," on which the judicial power can operate, not containing any ele-

ment capable of only legislative or executive determination. We do not find that the termination of the injunction after a specified time, or the machinery established in an attempt to obtain a peaceful settlement of the underlying dispute during the injunction's pendency, detracts from this conclusion.

The result is that the judgment of the Court of Appeals for the Third Circuit, affirming that of the District Court, is affirmed. Our mandate shall issue forthwith.

It is so ordered.

MR. JUSTICE FRANKFURTER and MR. JUSTICE HARLAN: In joining the Court's opinion we note our intention to file in due course an amplification of our views upon the issues involved which could not be prepared within the time limitations imposed by the necessity of a prompt adjudication in this case.

SUPREME COURT OF THE UNITED STATES

No. 504.—October Term, 1959.

United Steelworkers of America, Petitioner, v. United States of America.	On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[November 7, 1959.]

Mr. Justice Douglas, dissenting.

Great cases, like this one, are so charged with importance and feeling that, as Mr. Justice Holmes once remarked (*Northern Securities Co. v. United States*, 193 U. S. 197, 400–401, dissenting opinion), they are apt to generate bad law. We need, therefore, to stick closely to the letter of the law we enforce to keep this controversy from being shaped by the intense interest which the public rightfully has in it. The statute, which Congress had authority to pass, speaks in narrow and guarded terms. Section 206 of the Labor Management Relations Act of 1947, 61 Stat. 155, 29 U. S. C. § 176, gives the President power to invoke the aid of a board of inquiry whenever he is of the opinion that a strike or lock-out will imperil "the national health or safety." The President in appointing the board of inquiry in this case stated:

> "The strike has closed 85 percent of the nation's steel mills, shutting off practically all new supplies of steel. Over 500,000 steel workers and about 200,000 workers in related industries, together with their families, have been deprived of their usual means of support. Present steel supplies are low and the resumption of full-scale production will require some weeks. If production is not quickly resumed, severe effects upon the economy will endanger the economic health of the nation."

It is plain that the President construed the word "health" to include the material well-being or public welfare of the nation. When the Attorney General moved under §208 for an injunction in the District Court based on the opinion of the President and the conclusions of the board of inquiry, the union challenged the conclusion that "the national health or safety" was imperiled, as those words are used in the Act. The District Court found otherwise, stating five ways in which a continuance of the strike would, if permitted to continue, imperil "the national health and safety":

> "(a) Certain items of steel required in top priority military missile programs of the United States are not made by any mill now operating, nor available from any inventory or from imports. Any further delay in resumption of steel production would result in an irretrievable loss of time in the supply of weapons systems essential to the national defense plans of the United States and its allies.
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> "(b) The planned program of space activities under the direction of the National Aeronautics and Space Administration has been delayed by the strike and will be further delayed if it is continued. Specifically, project MERCURY, the nation's manned satellite program, which has the highest national priority, has been delayed by reason of delay in construction of buildings essential to its operation. This program is important to the security of the nation. Other planned space programs will be delayed or threatened with delay by a continuation of the strike.
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> "(c) Nuclear Submarines and the naval shipbuilding program other than submarines, including new construction, modernization, and conversion, have been affected by reason of the inability to secure boilers, compressors, and other component parts re-

quiring steel. Products of the steel industry are indispensable to the manufacture of such items and delay in their production will irreparably injure national defense and imperil the national safety.

"(d) Exported steel products are vital to the support of the United States bases overseas and for the use of NATO allies and similar collective security groups. The steel strike, if permitted to continue, will seriously impair these programs, thus imperiling the national safety.

"(e) A continuation of the strike will have the ultimate effect of adversely affecting millions of small business enterprises, almost all of which are directly or indirectly dependent upon steel products and most of which lack the resources to stock large inventories. In addition, it will have the effect of idling millions of workers and a large proportion of the facilities in industries dependent upon steel for their continued operation. Manufacturing industries directly dependent on steel mill products account for the employment of approximately 6,000,000 workers and normal annual wages and salaries totalling approximately $34,000,000,000. The products of these industries are valued at over $125,000,000,000. The national health will be imperiled if the strike is permitted to continue."

Here again it is obvious that "national health" was construed to include the economic well-being or general welfare of the country. The Court of Appeals, in sustaining the injunction, was apparently of the same view. This seems to me to be an assumption that is unwarranted. I think that Congress when it used the words "national health" was safeguarding the heating of homes, the delivery of milk, the protection of hospitals, and the like. The coal industry, closely identified with physical health of people, was the industry paramount in the de-

bates on this measure. The coal industry is indeed cited on the Senate side in illustration of the need for the measure. S. Rep. No. 105, 80th Cong., 1st Sess., p. 14. There were those in the Senate who wanted to go so far as outlaw strikes "in utilities and key nation-wide industries" in order to protect the "public welfare." 93 Cong. Rec. A1035. Reference was, indeed, made to strikes in industries "like coal or steel" among those to be barred in "the public interest." *Ibid.* But the Senate did not go that far. The Senate bill reached only situations where there was peril to the "national health or safety."[1] The House bill went further and included cases where there was peril to "the public health, safety, or interest."[2] The Senate view prevailed, that version being adopted by the Conference.[3] Some light is thrown on the wide difference between those two standards—if words are to be taken in their usual sense—by the following colloquy on the floor of the House:[4]

> "Mr. KENNEDY. I believe that this country should certainly be in a position to combat a strike that affects the health and safety of the people. Therefore, I feel that the President must have the power to step in and stop those strikes. I am not in the position of opposing everything in this bill, but there are certain things in the bill that are wrong. I do not see how the President is going to have the power to stop strikes that will affect the health and safety of the people under the procedure listed in section 203. I think he must have that power.
>
> "I agree with you that any bill providing for an injunction should carefully consider the position of

[1] Legislative History of the Labor Management Relations Act, 1947 (Gov. Print. Off. 1948), Vol. I, pp. 274, 276.

[2] Legislative History, Vol. I, *supra*, Note 1, pp. 214-215.

[3] H. R. Rep. No. 510, 80th Cong., 1st Sess., p. 64.

[4] 93 Cong. Rec. 3513.

the striking union and make sure that their rights are protected. I think that in those cases Federal seizure until the dispute is settled would perhaps equalize the burden in the fairest possible manner.

"Mr. OWENS. Will not the gentlemen admit that we have a third word in there? It is 'interest.' Could we not better use the word 'welfare' instead of 'interest,' because the word 'welfare' occurs in the Constitution? It is just as broad as the word 'interest' and more practical.

"Mr. KENNEDY. The proposal embraces two separate things, health, and safety. Because the remedy is drastic these two, in my opinion, are sufficient. I believe we should apply this remedy when the strike affects health or safety, but not the welfare and interest, which may mean anything. I would not interfere in an automobile strike because while perhaps that affects national interest, it does not affect health and safety.

"Mr. OWENS. Does not the gentleman agree that 'welfare' is the stronger and in line with the President's idea?

"Mr. KENNEDY. No. Both 'welfare' and 'interest' are too indefinite. They could cover anything. I would not have the law apply except in cases where the strike affected health and safety."

To read "welfare" into "health" gives that word such a vast reach that we should do it only under the most compelling necessity. We must be mindful of the history behind this legislation. *In re Debs*, 158 U. S. 564, 584, stands as ominous precedent for the easy use of the injunction in labor disputes. Free-wheeling Attorneys General used compelling public demands to obtain the help of courts in stilling the protests of labor. The revulsion against that practice was deep; and it led ultimately to the enactment of the Norris-LaGuardia Act.

47 Stat. 70, 29 U. S. C. § 101.[3] We deal of course with a later Congress and an Act that sets aside by § 208 (b) *pro tanto* the earlier Act. What Congress has created Congress can refashion. But we should hesitate to conclude that Congress meant to restore the use of the injunction in labor disputes whenever that broad and all-inclusive concept of the public welfare is impaired. The words used—"national health or safety"—are much narrower.

Congress in the same Act knew how to speak when it spoke all-inclusively. The policy statement in the Labor Management Relations Act of 1947 speaks in broad terms. There is a declaration in the preamble that "neither party has any right in its relations with any other to engage in act or practices which jeopardize the public health, safety, or interest." 61 Stat. 136. The words "public . . . interest" cover five titles of a far-reaching regulatory measure. Yet when Congress came to define the jurisdiction of courts to intervene in strikes or lock-outs it spoke in more restricted terms, confining the judiciary to injunctions where there is impending peril to "the national health or safety." That narrow reading is, indeed, the only one that can be squared with Senator Taft's explanation of the use of an injunction in a strike situation. The strike, he said, must not only

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[3] For discussion of the abusive use of blanket injunctions in labor controversies, see Allen, Injunction and Organized Labor, 28 Am. L. Rev. 828; Chafee, The Inquiring Mind, p. 198; Dunbar, Government by Injunction, 13 L. Q. Rev. 347; Frey, The Labor Injunction: An Exposition of Government by Judicial Conscience and its Menace; Lane, Civil War in West Virginia; Pepper, Injunctions in Labor Disputes, 49 A. B. A. Rep. 174; Royce, Labor, The Federal Anti-Trust Laws, and the Supreme Court, 5 N. Y. U. L. Q. Rev. 19; Stimson, The Modern Use of Injunctions, 10 Pol. Sci. Q. 189.

On the Norris-LaGuardia Act and what Congress intended to abolish by it, see Norris, Injunctions in Labor Disputes, 16 Marq. L. Rev. 157; Witte, The Federal Anti-Injunction Act, 16 Minn. L. Rev. 638.

affect substantially "an entire industry," it must also "imperil the national health or safety, a condition which, it is anticipated will not often occur."[6] Yet if "national health" includes the public welfare, injunctions will issue whenever any important industry is involved—whether it be steel or automobiles or coal or any group of industries where one union makes collective agreements for each of the component unions.

It is a fact of which we can take judicial notice that steel production in its broadest reach may have a great impact on "national health." Machinery for processing food is needed; hospitals require surgical instruments; refrigeration is dependent on steel; and so on. Whether there are such shortages that imperil the "national health" is not shown by this record. But unless these particularized findings are made no case can be made out for founding the injunction on impending peril to the "national health."

Nor can this broad injunction be sustained when it is rested solely on "national safety." The heart of the District Court's finding on this phase of the case is in its statement, "Certain items of steel required in top priority military missile programs are not made by any mill now operating, nor available from any inventory or from imports." Its other findings, already quoted, are also generalized. One cannot find in the record the type or quantity of the steel needed for defense, the name of the

[6] 93 Cong. Rec. 6860.

Senator Smith said in like vein:

"Furthermore in title II of the bill we provide for the extreme cases which threaten national paralysis. To meet an industry-wide stoppage of some kind which may cause injury to the health or safety of 140,000,000 people, such as a transportation strike, or a coal strike, we have set up special machinery which will enable the Attorney General, on his own initiative, to petition the courts to prevent either a shut-down or a walk-out, until the mediation processes have had time to function." 93 Cong. Rec. 4409.

plants at which those products are produced, or the number or the names of the plants that will have to be reopened to fill the military need. We do know that for one and a half years ending in mid-1959 the shipments of steel for defense purposes accounted for less than 1% of all the shipments from all the steel mills. If 1,000 men, or 5,000 men, or 10,000 men can produce the critical amount the defense departments need, what authority is there to send 500,000 men back to work?

There can be no doubt that the steel strike affects a "substantial" portion of the industry. Hence the first requirement of § 208 (a) of the Act is satisfied.[2] But we do know that only a fraction of the production of the struck industry goes to defense needs. We do not know, however, what fraction of the industry is necessary to produce that portion.[3] Without that knowledge the District Court is incapable of fashioning a decree that will safeguard the national "safety," and still protect the rights of labor. Will a selective reopening of a few mills be adequate to meet defense needs? Which mills are

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[2] Section 208 (a) provides:

"Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

"(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

"(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate."

[3] The record shows, as does the President's statement, *supra*, that mills accounting for at least 15% of the nation's steel production are still in operation and are unaffected by the strike.

these? Would it be practical to reopen them solely for defense purposes or would they have to be reopened for all civilian purposes as well? This seems to me to be the type of inquiry that is necessary before a decree can be entered that will safeguard the rights of all the parties. Section 208 (a) gives the District Court "jurisdiction to enjoin" the strike. There is no command that it *shall* enjoin 100% of the strikers when only 1% or 5% or 10% of them are engaged in acts that imperil the national "safety." We are dealing here with equity practice which has several hundred years of history behind it. We cannot lightly assume that Congress intended to make the federal judiciary a rubber stamp for the President. His findings are entitled to great weight; and I along with my Brethren accept them insofar as national "safety" is concerned. But it is the Court, not the President, that is entrusted by Article III of the Constitution to shape and fashion the decree. If a federal court is to do it, it must act in its traditional manner, not as a military commander ordering people to work willy-nilly, nor as the President's Administrative Assistant. If the federal court is to be merely an automaton stamping the papers an Attorney General presents, the judicial function rises to no higher level than an IBM machine. Those who grew up with equity and know its great history should never tolerate that mechanical conception.

An appeal to the equity jurisdiction of the Federal District Court is an appeal to its sound discretion.[2] One historic feature of equity is the molding of decrees to fit the requirements of particular cases. Equity decrees are not like the packaged goods this machine age produces. They are uniform only in that they seek to do equity in a given case.[3] We should hesitate long before we con-

[2] "Equity has contrived its remedies and has always preserved the elements of flexibility and expansiveness so that new ones may be invented, or old ones modified, to meet the requirements of every

clude that Congress intended an injunction to issue against 500,000 workers when the inactivity of only 5,000 or 10,000 of the total imperils the national "safety." That would be too sharp a break with traditional equity practice for us to accept, unless the statutory mandate were clear and unambiguous. In situations no more clouded with doubt than the present one we have refused to read a statutory authority to issue a decree as a command to do it. *Hecht Co.* v. *Bowles*, 321 U. S. 321. We there said, "A grant of *jurisdiction* to issue compliance orders hardly suggests an absolute duty to do so under any and all circumstances." *Id.*, 329. And see *Porter* v. *Warner Co.*, 328 U. S. 395, 398.

Plainly there is authority in the District Court to protect the national "safety" by issuance of an injunction. But there is nothing in this record to sustain the conclusion that it is necessary to send 500,000 men back to work.

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case. *Union Pacific R. Co.* v. *Chicago, R. I. & P. R. Co.*, 163 U. S. 564, 601. And the extent to which the Court may grant or withhold its aid, and the manner of molding its remedies may be affected by the public interest involved. *United States* v. *Morgan*, 307 U. S. 183, 194. *Securities & Exchange Comm'n* v. *United States Realty Co.*, 310 U. S. 435, 455. There is in fact no limit to the variety of equitable remedies which can be applied to the circumstances of particular case. 1 Pomeroy's Equity Jurisprudence (5th ed.) § 109.

An equity court may, by trial for a limited term, determine how much relief is required to meet the situation, and thereby avoid unnecessary hardship to any of the parties. McClintock on Equity (2d ed.) § 30. Pomeroy, *supra*, §§ 115, 116. This principle has been applied by this Court several times, *e. g.*, where an injunction was sought against the pollution of a stream, the defendant was permitted to construct settling basins to alleviate the injury to the plaintiff and the injunction was modified to allow experiments toward that end. *Arizona Copper Co.* v. *Gillespie*, 230 U. S. 46. And where defendants' smelters emitted noxious fumes an injunction was withheld to permit them to devise a practical method of installing preventing devices. *Georgia* v. *Tennessee Copper Co.*, 237 U. S. 474. See also *Alexander* v. *Hillman*, 296 U. S. 222.

to give the defense department all it needs for the nation's "safety." If more men are sent back to work than are necessary to fill the defense needs of the country, other objectives are being served than those specified in the statute. What are these other objectives? What right do courts have in serving them? What authority do we have to place the great weight of this injunction on the backs of labor, when the great bulk of them affected by it have nothing to do with production of goods necessary for the nation's "safety" in the military sense of that word? Labor injunctions were long used as cudgels—so broad in scope, so indiscriminate in application as once to be dubbed "a 'scarecrow' device for curbing the economic pressure of the strike." See Frankfurter and Greene, The Labor Injunction (1930), pp. 107–108. The crop of evils that grew up during those regimes was different in some respects from those generated by this decree. The problems of vagueness, of uncertainty, of detailed judicial supervision that made police courts out of equity courts are not present here. But the same indiscriminate leveling of those within and those without the law is present. The injunction applies all the force of the Federal Government against men whose work has nothing to do with military defense as well as against those whose inactivity imperils the "national safety." It is not confined to the precise evil at which the present Act is aimed. Like the old labor injunctions that brought discredit to the federal judiciary this is a blanket injunction broad and all inclusive, bringing within its scope men whose work has nothing whatsoever to do with the defense needs of the nation. Being wide of the statutory standard it has, to use the words of Mr. Justice Brandeis, all the vices of the injunction which is used "to endow property with active, militant power which would make it dominant over men." See *Truax* v. *Corrigan*, 257 U. S. 312, 354, 368 (dissenting opinion). I cannot believe that Congress intended the

federal courts to issue injunctions that bludgeon all workers merely because the labor of a few of them is needed in the interests of "national safety."

Some years ago this Court struck down as unconstitutional state statutes making arbitration of labor disputes mandatory. *Wolff Co.* v. *Industrial Court*, 262 U. S. 522; *Dorchy* v. *Kansas*, 264 U. S. 286. Those cases held that compulsory arbitration violated the Due Process Clause of the Fourteenth Amendment. One can only guess as to what institutions of adjudication we might have in this field today had that experiment been given a chance.[1] The experiment, however, did not survive; and we have had little experience with it.[2] Collective bargaining and mediation are today the norm, except for the period of time in which an injunction is in force. By the terms of § 209, however, any injunction rendered may not continue longer than 80 days. The Act thus permits an injunction restricted in duration and narrowly confined by the requirements of the "national health or safety." When we uphold this injunction we force men back to work when their inactivity has no relation to "national health or safety." Those whose inactivity produces the peril to "national health or safety" which the Act guards against and only those should be covered in the injunction. The rest—who are the vast majority of the 500,000 on strike—should be treated like the employers are

[1] It was stated in S. Rep. No. 105, 80th Cong., 1st Sess., pp. 13–14 in reference to the new machinery for settling labor disputes:

"Under the exigencies of war the Nation did utilize what amounts to compulsory arbitration through the instrumentality of the War Labor Board. This system, however, tended to emphasize unduly the role of the Government, and under it employers and labor organizations tended to avoid solving their difficulties by free collective bargaining. It is difficult to see how such a system could be operated indefinitely without compelling the Government to make decisions on economic issues which in normal times should be solved by the free play of economic forces."

treated. They should continue under the regime of collective bargaining and mediation until they settle their differences or until Congress provides different or broader remedies. When we assume that all the steelworkers are producing steel for defense when in truth only a fraction of them are, we are fulfilling the dreams of those who sponsored the House bill and failed in their efforts to have Congress legislate so broadly.

Though unlikely, it is possible that, had the District Court given the problem the consideration that it deserves, it could have found that the only way to remove the peril to national safety caused by the strike was to issue the broad, blanket injunction. It may be that it would be found impractical to send only part of the steelworkers back to work. The record in this case, however, is completely devoid of evidence to sustain that position. Furthermore, there is no indication that the District Court ever even considered such a possibility. I am unwilling to take judicial notice that it requires 100% of the workers to produce the steel needed for national defense when 99% of the output is devoted to purposes entirely unconnected with defense projects.

I would reverse this decree and remand the cause to the District Court for particularized findings [1] as to how the

[1] The particularized findings necessary are illustrated by those in *United States* v. *Steelworkers of America*, 202 F. 2d 132, 134:

"At its Dunkirk plant the company was then engaged in commerce and in the production of goods for commerce, primarily in the 'heat exchanger, pressure vessel and prefabricated pipe industry'; the threatened strike would not have affected all, or a substantial part, of that industry. A major part of the Dunkirk plant's production was to carry out contracts the company had with the Atomic Energy Commission and certain of its prime contractors to furnish specialized articles which were essential to the completion of the Commission's program for construction of facilities needed to produce atomic bombs for the national defense. These essential articles were heat exchanger shells used in the production of heavy water needed to operate

steel strike imperils the "national health" and what plants need to be reopened to produce the small quantity of steel now needed for the national "safety." [12] There would also be open for inquiry and findings any questions pertaining to "national health" in the narrow sense in which the Act uses those words.

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nuclear reactors capable of producing fissionable materials, gas converter assemblies and other critical items all of which could have been obtained elsewhere only after other potential sources had been equipped to produce them. Resort to other sources would, consequently, have involved months of delay and set back correspondingly the construction program of the Commission and the production of fissionable materials and atomic weapons vital to the national defense. The threatened strike would have affected a substantial part of the atomic weapon industry and would have imperiled the national safety."

[12] The factor of "safety" may well involve, for example, the need for replacement of equipment on railroad trains. An affidavit of the Secretary of Commerce states:

"The continuing availability of most of these steel supplies is vital to the nation's health and safety, used as they are for the production of personal necessities, including surgical instruments, heating and refrigeration equipment, and articles used in the preparation and preservation of food. Steel is also essential to transportation, to the production and transmission of light and power, to the provision of sanitation services, and in the construction and mining industries."

But the Government in oral argument conceded that neither that aspect of "safety" nor any other aspect of "safety" apart from military defense is presented by this record, since there are no findings showing the extent to which inventories for those other purposes may be in short supply.